GOVERNMENT MATTERS

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Witness Wednesdays: Voices of the Unemployed

More than **3.2 million hardworking Americans** have been denied access to emergency unemployment compensation since the program was allowed to expire on Dec. 28, 2013. Extended unemployment benefits help people pay their rent, utility bills, and transportation while they seek new work.

In the past, both Republicans and Democrats have helped the unemployed get back on their feet. It's time for us to come together again and support our friends and neighbors.

The Center for Effective Government, the National Employment Law Project, the Coalition on Human Needs, and the National Women's Law Center have collected more than 2,300 stories from Americans suffering from long-term unemployment. We've already held three events, and throughout July, our organizations will continue to join members of Congress and faith, labor, civil rights, and nonprofit leaders to share some of these stories in a weekly series **Witness Wednesday** events. We invite you to join with us, listen to these readings, and demand an extension of long-term unemployment insurance.

All Witness Wednesdays events will take place at the House Triangle on Capitol Hill in Washington, DC (near Independence Ave. SE, S. Capitol St. SE, and New Jersey Ave. SE). The readings will run from 12:30 to 1:15 p.m. Eastern time on: **July 9, July 16, July 23, and July 30.** If you are not in Washington or cannot make it to the events in person, you can watch them online. Bookmark **www.witnesswednesdays.org** and check back often for updates and links to archived videos.

To Fix Our Roads, We Need to Repair the Potholes in the Budget

by Scott Klinger

In about a month, the nation's Highway Trust Fund, the principal source of funding for repairing and rebuilding our country's highways, will run dry. Paving projects across the country will grind to a halt, and construction workers, currently making good money, will join nearly 10 million of their fellow unemployed Americans.

Our nation spends $91 billion a year on road maintenance, but the Federal Highway Administration estimates $170 billion is needed to keep America moving. Nearly a third of our major roads are in poor or mediocre condition, according to a 2013 survey by the American Society of Civil Engineers.

Highway funds have run out because House leadership refuses to allow a vote on raising the nation's gas tax. This 18.5-cent-a-gallon tax on fuel has not been increased since 1993. If it merely kept up with inflation, it would be 29 cents a gallon, according to estimates from the Center for American Progress.

Rather than considering raising the gas tax so we can repave roads and keep tens of thousands of construction workers on the job, some people in Congress would rather reward tax-dodging corporations. Senate Majority Leader Harry Reid (D-NV) and conservative Sen. Rand Paul (R-KY) worked together on a plan that would allow tax-dodging companies to bring back some of the $2 trillion they have stashed offshore by forgiving most of the taxes they owe on these funds. And Rep. John Delaney (D-MD) has been joined by 68 House co-sponsors from both parties on a proposal that rewards profit-shifting companies with large tax breaks if they agree to use a small portion of their repatriated profits to invest in long-term infrastructure bonds.

Instead of rewarding scofflaws by allowing them to keep almost all the profits on which they have avoided paying U.S. taxes, we should be boarding up the financial exit ramps out of the U.S. This would slow the $90 billion a year the nation loses when corporations use accounting tricks to shift the profits they earn in America to tax havens like the Cayman Islands. If we kept that revenue from leaving in the first place, we'd have enough to fix our roads without raising the gas tax, and we'd still have $11 billion left over to repair our kids' schools or plug the leaks in our cities' aging plumbing systems.

We could also change the nation's tax laws and close loopholes that allow giant corporations to take advantage of sections of the tax code intended to benefit small business owners. In the 1950s, Congress established "S corporations" to help "sole proprietors." This tax designation allowed small business owners to take advantage of the limited liability protections afforded to larger corporations, meaning that if their businesses failed, the owners would lose all the money they invested in the businesses, but not their homes and personal property. S corporations also provided small business owners the opportunity to report income from their businesses on their individual tax returns. Rather than paying corporate income taxes and then paying taxes again on the dividends they took from the businesses, they paid just once. It helped to make the tax system fairer for small businesses.

Today, many big businesses are incorporated as S corporations and partnerships. One of the nation's biggest S corporations is Bechtel, the world's largest construction company and a beneficiary of highway construction contracts. Despite having $40 billion in revenues, Bechtel does not pay federal income tax because its profits are reported on the personal income taxes of owners of its stock. We need to repair this corporate loophole in order to fill the holes in the transportation budget and the actual potholes in our infrastructure. Allowing corporations to reincorporate as S corporations or partnerships to lower their taxes unfairly shifts the cost of paying for the public services these corporations depend on to middle-class taxpayers and community-based small businesses who can least afford it.

Finally, some conservatives in Congress have even suggested the way forward to "find more funds" for infrastructure projects is to repeal a provision in the Davis-Bacon Act, which requires that prevailing wages be paid on publicly financed construction contracts. Prevailing wage laws have helped build America's middle class by ensuring that those who work hard can live a dignified life. Removing these protections, particularly during times of high unemployment, will send construction wages tumbling. Rather than finding more ways to turn good jobs into low-wage ones, it's time for our elected officials to demand that the corporations that receive so much from operating in the U.S. pay their fair share to sustain public services and protect good, middle-class jobs in America.

Supreme Court Confirms EPA Ability to Regulate Greenhouse Gases

by Ronald White

On June 23, the U.S. Supreme Court issued a decision upholding the U.S. Environmental Protection Agency's (EPA) ability to require large industrial sources to reduce greenhouse gases that contribute to global warming. The 7-2 decision represents a major victory for EPA's efforts to combat climate change.

Specifically, the Court found that EPA can continue to require large industrial sources of greenhouse gas pollution, such as power plants, oil and gas-related plants, chemical plants, and cement plants, to use the best available pollution control technology when building or rebuilding plants. Since 2011, more than 160 new and modified large industrial sources have incorporated the best available technologies for limiting greenhouse gases. A 5-4 majority also determined that such "pre-construction permits" would not be required for the many smaller sources that EPA had concluded should not be included in the permit program.

The Court also ruled that EPA could not require greenhouse gas emission permits from facilities that were not already required to obtain permits for other air pollutants. However, the effect of this ruling will only reduce the scope of potentially affected industrial sources by three percent, from 86 percent to 83 percent.

The Court also refused to consider challenges to two prior decisions from the U.S. Court of Appeals for the D.C. Circuit that provide the foundation for EPA's authority to regulate carbon pollution. The first decision upheld EPA's scientific finding that carbon pollution endangers public health and welfare, while the second decision affirmed EPA's greenhouse gas emissions limits for cars and trucks.

EPA believes that the Supreme Court's decision provides the legal foundation for regulating greenhouse gases, including standards recently proposed for existing power plants. Those rules, as well as proposed greenhouse gas emission limits for new power plants, will likely be challenged by industry when finalized. However, a recent poll released by the American Sustainable Business Council (ASBC) found that almost two-thirds of small business owners support government standards to reduce carbon emissions from power plants.

Massive Fracking on Federal Lands Overwhelms Critical Inspections

by Ronald White

Forty percent of the highest-risk oil and gas wells drilled on federal lands over the past several years have gone uninspected by the Bureau of Land Management (BLM), according to a recent Associated Press (AP) analysis. The massive boom in oil and gas drilling on federal and tribal lands, primarily using hydraulic fracturing (fracking) techniques, has resulted in a one-third increase in oil and gas wells since 2007, with a total of more than 100,000 wells.

According to the AP analysis, 1,400 of the approximately 3,500 wells in 13 states classified as "high priority" due to their potential risk for water contamination and other health and safety concerns had not been federally inspected between 2009 and 2012. Half of the high-priority wells in South Dakota hadn't been inspected, while Wyoming had the largest number (632) of uninspected wells. The BLM has agreements regarding well inspections on federal lands with regulators in California, Colorado, Nevada, and Wyoming. All high-risk wells were inspected in six states – Alabama, Mississippi, Michigan, New York, Ohio, and Texas.

A May 2014 report on the same issue from the U.S. Government Accountability Office (GAO) found that 2,100 of 3,702 high-priority wells in 14 states hadn't been inspected by the BLM between the 2009 and 2012 fiscal years. The AP report found that the GAO analysis overcounted the number of high-priority wells and the number of uninspected wells due to duplicate entries in the BLM database. The GAO also found that the BLM database was missing information on the priority status of almost 1,800 wells. The GAO report noted that "BLM is hindered in its ability to provide reasonable assurance that federal and Indian resources are properly managed and protected because not all BLM field offices have comprehensive and reliable data identifying the location of federal and Indian oil and gas resources or existing and new wellbores — data needed to protect oil and gas resources."

The amount of funding that BLM has received for inspecting oil and gas wells has declined over the past several years. If approved by Congress, the BLM's 2015 budget request of $150 million for oil and gas operations would allow the agency to conduct the bulk of its required inspections over three years, in part by collecting fees from oil and gas companies. Unlike past years, $48 million will be earmarked for inspections. However, the BLM has made similar budget requests over the last several years with little success.

BLM has also had difficulty recruiting and retaining inspectors with the necessary technical expertise. A February 2014 GAO report noted that the turnover of petroleum engineers at the BLM was over 20 percent, more than twice the national average. While a petroleum engineer could get a starting salary of $90,000 in the private sector, the BLM typically pays $35,000. This year's appropriations bill would allow the BLM to increase inspector salaries to around $44,000.

The problem of uninspected, high-risk oil and gas wells on federal lands are likely just the tip of the iceberg – as of 2012, there were approximately 500,000 gas-producing wells alone in the United States, with states responsible for inspecting the vast majority of these wells. Given increasing reports of water contamination and high levels of air pollution from oil and gas well operations, it is essential that improved efforts be put in place to ensure that our nation's oil and gas wells are receiving adequate oversight.

States Work to Keep Toxic Chemicals Out of Children's Products

by Amanda Frank

New York's Child Safe Products Act failed to make it to the state Senate floor prior to the end of the legislative session last Friday, despite being passed by the New York State Assembly with overwhelming bipartisan support. The bill would have better protected children by tightening standards on toxic chemicals used in kids' products, from car seats to toys to clothes. New York is one of several states seeking to create stronger chemical safeguards than currently exist at the federal level.

Children face higher risks from chemical exposure due to biological and behavioral factors, and studies show that exposure to certain chemicals can interfere with their development. Because of this, it is critical that the products children play with, eat from, or sleep on are free from hazardous chemicals.

New York's proposed legislation, sponsored by state Sen. Phil Boyle (R-Suffolk County), would have created a list of nine priority chemicals (including toxins like arsenic and lead) that would eventually be banned from all children's products sold in the state. Manufacturers would have had one year to test for the priority chemicals and report them to the Department of Environmental Conservation (DEC). Starting Jan. 1, 2018, products containing these chemicals would have been banned outright.

Moreover, legislators would have been allowed to add up to 10 new chemicals to the priority list every three years. When first introduced, the bill sought to give the New York Department of Environmental Conservation the authority to add new priority chemicals with no limit on the number of substances it could add. Following lobbying efforts by the chemical industry, the provision was amended to place responsibility with legislators and restrict the number of chemicals that could be added to the list.

Many were deeply disappointed that the legislation, which flew through the Assembly on a 111-25 vote, never made it to a Senate vote. Some blamed chemical industry lobbyists, who, despite succeeding with amending the bill, spent significant funds to block this and other chemical reforms. Either way, the legislation – with over 40 state Senate sponsors and 55 organizational endorsements – speaks to the desire for a stronger, more inclusive regulatory framework for chemicals in children's products.

New York Not Alone

The Child Safe Products Act was modeled off of similar legislation passed in other states. Washington State restricts the use of lead, cadmium, and phthalates in children's products and currently has a list of over 60 priority chemicals that require reporting by manufacturers. This data is publically available on the Washington Department of Ecology's website, where people can search by chemical or product type.

Maine's law identifies two priority chemicals with use restrictions that also require reporting. Bisphenol-A (BPA), for instance, is banned from baby food packaging and must be reported to Maine's Department of Environmental Protection (DEP) when included in children's toys and tableware. Restricting the use of harmful chemicals and making information public is essential for parents and caregivers looking to protect their children from chemical exposure.

What about Federal Regulations?

States like Maine and Washington enacted this legislation because current federal regulations are not rigorous enough to keep toxic chemicals out of children's products. The Toxic Substances Control Act (TSCA) of 1976, the main legislation that oversees chemicals in commerce, gives the U.S. Environmental Protection Agency (EPA) authority to require manufacturers to test chemicals they use and to restrict the use of harmful chemicals. While this sounds promising, in reality, the EPA's scope is quite limited. A report by the Lowell Center for Sustainable Production demonstrates that the agency must go through numerous hoops in order to test and restrict a chemical, including proving that the benefits of regulation exceed the costs.

Moreover, TSCA essentially gave a free pass to the more than 60,000 chemicals that were already in commerce when the law was passed, declaring them safe until proven otherwise. This puts the burden of proof on government agencies that have limited resources and authority to test the tens of thousands of chemicals in use. In the 38 years since TSCA was enacted, EPA has required testing on just 200 chemicals and restricted a mere five. Thus the agency lacks health data on nearly all of the 84,000 chemicals on the TSCA inventory.

This means that products intended for children contain chemicals with unknown risks – or in some cases, known toxins are allowed to remain in use. For instance, in 2012, the Consumer Product Safety Commission (CPSC) tested children's jewelry and found traces of cadmium at hazardous levels in six different products, one of which was a bracelet marketed for infants. Cadmium exposure can cause kidney and bone damage and is linked to learning disabilities in children. Yet the CPSC claimed it could neither issue a recall nor sound a public warning about these hazards, saying that jewelry did not meet the definition of "children's products" – despite the fact that they were packaged and marketed to children.

We clearly have a broken chemical regulatory system when government agencies cannot remove cadmium-laced baby bracelets from the market. Interestingly, the New York bill would have closed this loophole in the state and banned cadmium by 2018 while providing a clear definition of what constitutes a "children's product."

Conclusion

This bill, along with those that passed in other states, sends a clear message that improved federal standards are needed. Congress is considering legislation to update TSCA, but current bills in the House and Senate would further weaken our ability to restrict harmful chemicals.

The state child product safety bills, on the other hand, provide a more comprehensive framework for safeguarding children. The laws also take into consideration children's specific vulnerabilities and provide clear definitions of children's products to reduce gaps and loopholes. The state measures also consistently provide clear authority for state agencies to require testing on priority chemicals, shifting the burden to the manufacturers to prove their products are safe.

Building provisions like these into any federal TSCA reform would provide more child-specific protections and ensure that agencies can regulate the 84,000 chemicals they're supposed to oversee.

For more information on state chemical legislation, visit SaferStates, a network of environmental health organizations across the country working to strengthen both state and national chemical policies.

Senate Considering Constitutional Amendment to Curb Influence of Money in Politics

by Lukas Autenried

Democracy is premised on affording citizens equal say in determining the nature and direction of our government. The impacts of the U.S. Supreme Court's rulings in the *Citizens United* and *McCutcheon* cases threaten to undermine this fundamental principle by maximizing the political power of those with the most economic power. In response, Congress is considering a constitutional amendment aimed at restoring the ability of states and the federal government to develop effective campaign finance policies.

The Problem with Money in Politics

Big money in politics has a profoundly negative impact on the democratic political system. In addition to the potential for individual corruption, such as bribery, money in politics can result in structural or systemic corruption. Campaign donations buy access and attention which, even if they do not amount to outright influence, warp the information that public officials receive. Elected officials can then develop a distorted sense of priorities, based on the interests of wealthy individuals and corporations rather than American voters. Despite widespread public concern about climate change, for instance, Congress has failed to enact legislation to reduce greenhouse gas emissions to safer levels – perhaps influenced by concerns expressed by polluters that donate large sums to candidates.

The power of money to influence politics also creates the potential for the voices of wealthy special interests to drown out those of everyday citizens. The average voter cannot compete with the capacity of large corporations or wealthy individuals to spend virtually limitless amounts of money on elections and the nation's political agenda. As Justice Stephen Breyer explained in his dissenting opinion in *McCutcheon v. FEC*, "Where enough money calls the tune, the general public will not be heard." When campaign contributions are not reasonably limited, collective speech ceases to matter and the average citizen, as Sen. Dick Durbin (D-IL) pointed out, "loses their appetite for the contest."

Moreover, the ability of representatives to support the public good is hindered if they must allocate too much of their time securing the necessary funding for their reelection campaigns. For example, freshmen members of Congress are advised by their party leadership to spend four hours each day making fundraising calls and one hour on "strategic outreach," including fundraising events. This perpetual "fund race" means that many lawmakers devote half their time to fundraising, rather than governing.

The Supreme Court Chips Away at Campaign Finance Rules

In order to protect against the harmful effects of money in politics, states and the federal government have regulated campaign finance for decades. However, over the past 40 years – and particularly since 2010 – the U.S. Supreme Court has undone many of those protections, primarily by following a line of reasoning that equates money with speech.

The Court's 1976 decision in *Buckley v. Valeo* opened the doors to that way of thinking. The ruling struck down restrictions on campaign spending, finding that such regulation unduly limited free speech. The ruling upheld limits on campaign contributions to prevent "corruption or its appearance" but paved the way for future weakening of campaign finance laws by granting free speech protections to campaign expenditures.

The Court followed this line of reasoning to an extreme in its 2010 ruling in *Citizens United v. FEC*. The Court's decision overturned limits on independent political expenditures by corporations and unions on the grounds that such expenditures are political speech protected by the First Amendment. While the ruling encouraged disclosure requirements, Congress has yet to institute new provisions to require transparency for such expenditures.

The Court further rolled back limitations on campaign spending in its 2014 ruling in *McCutcheon v. FEC*. Again citing undue restrictions on free speech, that decision overturned the aggregate limit of contributions an individual could make to federal elections. This ruling marks the latest step in a transition away from concerns about corruption and toward the protection of campaign contributions as free speech. Additionally, by narrowing the definition of corruption to what's known as *quid pro quo* corruption, the *Citizens United* and *McCutcheon* decisions have severely narrowed the allowable grounds for future campaign finance reforms, leaving a constitutional amendment as one of the few remaining recourses for those seeking to curb the influence of money in political campaigns.

A Flood of Money

In the wake of the *Citizens United* ruling, spending by outside groups rose 243 percent in 2012 over the previous presidential cycle, in what was the most expensive election to date. Equally alarming is that the bulk of the contributions are coming from a very small segment of the population. For example, 0.4

percent of the population was responsible for 63 percent of contributions to candidate campaigns, political parties, and PACs, according to the Center for Responsive Politics. Meanwhile, 60 percent of all SuperPAC donations came from 159 donors. The growth of large donors raises serious concerns regarding the democratic nature of U.S. elections.

The *Citizens United* ruling also helped launch the SuperPACs referenced above, which can accept unlimited contributions for the purpose of individual campaign expenditures. Though SuperPACs are not allowed to coordinate directly with candidates or political parties, in some cases “the ‘independent’ status can be a thinly disguised legal fiction,” according a report by the University of Denver’s Strategic Issues Program. “When [a SuperPAC] is directed by a candidate’s former campaign manager and its employees include former candidate staffers, formal coordination between the independent group and the candidate is hardly necessary.” The result is a flood of "dark money" that is both unregulated and undisclosed.

The impact of these rulings is not limited to federal elections. In fact, the smaller scale of state and local campaigns means that wealthy donors can wield even greater influence. Floyd McKissick Jr., a state representative from North Carolina, testified before the U.S. Senate Judiciary Committee about how dire the situation has become in his state. From 2006 to 2010, the amount of independent spending on elections in North Carolina has quadrupled.

Seventy-two percent of the outside money spent on state races in North Carolina was tied to one man, Art Pope. According to Rep. McKissick, the influence Pope's contributions had in determining the gubernatorial race secured him the position of the state's chief budget writer. Pope was also able to influence 18 critical races that shifted the political dynamic within the state, leading to laws that made it easier for big donors to get involved in politics, as well the nation's most restrictive voting requirements, which have already unduly impacted elderly, student, and minority voters, according to McKissick.

The Proposed Amendment

To address the growing concerns over money in politics, Sen. Tom Udall (D-NM) introduced S.J. Res. 19, a proposed amendment directed at contributions and expenditures intended to affect elections. The amendment would grant Congress the express authority to regulate and limit the raising and spending of money on federal elections while giving states similar regulatory jurisdiction over state and local campaigns. The amendment would also enable states and Congress to regulate and limit independent expenditures, including those of SuperPACs and wealthy individuals. Rather than dictating any specific policies or regulations, the amendment empowers Congress and the states to pass campaign finance reform legislation.

Support for such an amendment is widespread. So far, more than two million people have signed petitions supporting the amendment. Additionally, 160 members of Congress, 16 states, and more than 550 municipalities have called for an amendment to reform campaign finance laws. The amendment has also received endorsements from more than 120 national organizations, including the Center for Effective Government.

The proposed amendment is but one aspect of a broader effort at reform. There are numerous other statutory, regulatory, and administrative initiatives to increase transparency and create public financing options that would help level the electoral playing field.

Public Consensus on Need for Reform

The general consensus from voters across the political spectrum is that change is needed. According to a *Washington Post* poll, eight in ten respondents oppose the Supreme Court's decision in *Citizens United*. Democratic and Republican voters alike believe that the lack of limits on campaign contributions promotes corruption and gives large companies too much power, essentially creating a system of pay-to-play. The perception that moneyed interests wield disproportionate influence as a result of the *Citizens United* ruling is also discouraging average voters from participating – one in four Americans say that they are less likely to vote because of the decision.

Voters agree that restoring some semblance of political equality starts with limiting the amount of money spent on elections. Four in five Americans support legislation that would limit the amount candidates can spend on their election campaigns, while 76 percent believe that limits should be placed on outside groups like SuperPACs. Additionally, 83 percent of Americans think that corporations' electoral spending should be limited.

The Path Forward

Amending the U.S. Constitution is difficult. Congress can propose an amendment by a vote of two-thirds of both the House and the Senate. The amendment must then be ratified by three-fourths (38) of the state legislatures.

Though the difficulty of amending the Constitution reflects the gravity of such action, it is not without precedent, specifically when it comes to making the democratic process more inclusive. Such was the impetus behind the ratification of the 15th, 19th, 23rd, and 26th Amendments, all of which expanded the right to vote. Supporters of the amendment currently under consideration before the Senate Judiciary Committee see it as the latest iteration of this expansion of political equality.

The Senate Judiciary Subcommittee markup of the campaign finance amendment was scheduled to occur on June 18, and Senate Majority Leader Harry Reid (D-NV) has promised a floor vote on the amendment later this year. You can contact your senators to share your views on the amendment. Regardless of the outcome of the vote, the debate over the amendment is an opportunity to focus attention and promote open discourse on a critical issue and to build support for reform.

Take Action

Are Your Senators on Board as Co-Sponsors of a Constitutional Amendment to Overturn *McCutcheon* and *Citizens United*?

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