GOVERNMENT MATTERS

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## In This Issue



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## Corporate Inversions: A “Get Out of Taxes Free” Card

**by Scott Klinger**

If you don’t pay your taxes in America, you risk heavy fines or even jail time. That is, unless you are a major, profitable corporation able to merge with a firm registered in a low-tax country.

American firms have been on a buying binge lately, but some of these mergers have little to do with extending product lines or growing market share and everything to do with shedding the responsibility to pay taxes in the United States.

When a U.S. corporation buys a foreign corporation with the intent to shift its incorporation and tax domicile offshore, this is known as a "corporate inversion." A more accurate title might be “corporate

tax evasion." Seventy-five U.S. corporations have inverted since 1994 – with 47 doing so in the last decade alone, according to new data from the Congressional Research Service.

Corporate inversions are not new. The first was completed in 1984 by McDermott International, a large engineering and construction company serving the energy industry worldwide. Nearly another decade passed before a second company, cosmetics maker Helen of Troy, followed in 1993. When, in 1996, two more firms sought to escape U.S. taxes by shifting their incorporation offshore, the IRS acted by issuing the first anti-inversion regulations. Because these rules were narrow in scope, they were largely ineffective.

Between 1996 and 2004, when Congress took up the issue, an additional 27 corporations shed their U.S. incorporation for registration in foreign countries, most often those with low or no taxes on corporate earnings. In 2004, under the American Job Creation Act (the same law that granted U.S. corporations a huge tax holiday on their offshore earnings), the bar was raised for corporate inversions: firms were no longer simply allowed to engage in a paper transaction that shifted their registration from the U.S. to another country. They were instead required to show that 20 percent of the stockholders of the new company were not stockholders of the U.S. company prior to the merger, and that at least 25 percent of the merged company's employees, sales, and assets were in the new country of incorporation. These rules forced companies seeking this tax dodge to merge with established businesses in order to avail themselves of tax loopholes.

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Companies seeking corporate inversions are looking to avoid taxes on past profits, as well as future profits. Loopholes that allow corporations to shift profits earned in the U.S. offshore are well known and have been widely reported. At present, U.S. companies have more than $2 trillion in untaxed profits held offshore. Should a company bring those profits back to the U.S. in order to pay dividends or make an acquisition, it would owe U.S. taxes. However, if a corporation, through inversion, shifts its incorporation outside the U.S., it becomes a foreign corporation in the eyes of the IRS, and the tax liability on its offshore profits vanishes.

The numbers are not insignificant. Medical technology giant Medtronic is presently seeking to buy Covidien, an Irish-registered company managed from Massachusetts. At the end of April, Medtronic had $20.5 billion in untaxed offshore profits, more than twice the $9.7 billion it had socked away offshore five years earlier. If it moves ahead with its inversion plans, the tax savings alone from its offshore stash could cost the public as much as $7 billion in lost revenue.

After inversion, Medtronic will lose much of its responsibility to pay U.S. taxes, even while it retains its right to have U.S. taxpayers pay for significant amounts of its research and development bill. The research and experimentation tax credit saved Medtronic $18.5 million in its last fiscal year. It will continue to receive this support from the American people as long as that research is conducted within the U.S.

With the abuse of inversion rules now front-page news, and with estimates that the new wave of inversions could cost the Treasury $20 billion over the next decade, Congress is once again poised to act.

The Levin brothers, Sen. Carl (D-MI) and Rep. Sander (D-MI), have partnered to introduce The Stop Corporate Inversions Act of 2014 (S. 2360 with 21 co-sponsors and H.R. 4679 with 12 co-sponsors). The bill would impose a two-year moratorium on inversion transactions in order to give Congress the time to craft a permanent solution to the problem. The bill mandates that a U.S. company would have to give up control to its foreign partner by stipulating that the merged company would be considered a U.S. company unless 50 percent of the shares of the new company are owned by stockholders who were not shareholders of the prior corporation. The bill would also consider the merged entity a U.S. corporation for tax purposes if its management and control was conducted from the United States and 25 percent or more of the new firm's sales, employees, or assets were located in the United States.

Another vital solution to the growing problem of corporate inversions is to close the gaping loopholes that continue to allow corporations to shift the profits they earn in the U.S. offshore for tax purposes. These loopholes cost the Treasury more than $90 billion a year in lost corporate tax revenue, and they provide the fuel that keeps the inversion fire burning.

## We Can Fix This. We've Done It Before. Re-imagining Government

**by Katherine McFate**

When I talk to people who work in Washington, DC these days, I'm struck by the resignation. The political/policy professionals with whom I interact regularly are discouraged by the political posturing that undermines serious efforts at addressing national needs. They've counted noses and can tell me why nothing can happen in the next month, before November, before the end of the year, before the next presidential election. They tell us why we should give up. The fatigue is palpable, heavy, and contagious.

But outside of Washington, it feels different. People are angry, and there's energy in their anger. There's possibility in their frustration. Their impatience smells of change.

Across the political spectrum, the consensus is strengthening that the rules are rigged against working people. Sen. Elizabeth Warren is so popular because she speaks to the experience of ordinary Americans.

People remember that the big banks that sold exploding mortgages were "rescued," but the millions of homeowners who bought those mortgages were left in the cold.

They see Congress extending tax cuts for the corporations that provide them with large campaign contributions, but failing to extend emergency unemployment benefits for over three million Americans who have been searching for work for more than six months while eating through their savings and selling off the assets accumulated over a lifetime just to live another day.

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They are outraged that the U.S. Supreme Court ruled that corporations and individuals are free to spend millions of dollars to influence Congress and state legislatures, but unions can't require the people they represent to pay dues.

They are appalled at corporate managers who approve the sale of defective products or ongoing workplace safety risks that cost lives and walk away with "slap on the wrist" fines, while poor people who can't pay civil fines do jail time.

They decry rules that say student loan debt cannot be forgiven in a personal bankruptcy, but corporations and cities that declare bankruptcy can escape their obligations to pay workers the pensions they contributed to their entire lives.

A lot of rules today simply don't stand up to American values of fair play and common sense.

But any good student of American history can tell you this isn't new.

The Declaration of Independence and the Constitution are brilliant statements of our ambitions; we continue to work to expand and improve our democratic institutions in order to realize our ambitions. We've made enormous strides in improving the living standards and quality of life for an increasing share of our residents. But the expansion of opportunity was never pre-ordained. It has always been a tough slough. We've had heartbreaking periods of retrenchment and glorious leaps forward. Reform isn't easy and is often slow.

What history teaches us is that forward movement requires engagement and energy – and perhaps that anger at injustice and a commitment to use democratic institutions to re-write the rules and set things right begins that process. In every era, democratic government has been the instrument for lasting change. When our political structures fail to address the needs of the people, we change them; we expand the electorate, we change our voting laws, we elect senators directly. Our lurching and imperfect history has arced toward greater inclusion, increased opportunity, and expanded opportunity. And when that path is blocked, when certain factions gain too much power, we rein them in.

It's time. Let's de-rig the system, figure out the rules that need rewriting, and get to work.

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As a reminder to the discouraged and disheartened, we are starting a new blog post series. In it, we'll harvest stories from the past about how we expanded our democracy or identified a problem and fixed it. We want to remind our readers and allies that democratic governance is always a work in progress – because the world is always creating new collective challenges for us to solve. By bringing the stories of struggle – and success – from the past into the present, we hope to remind our readers that government has been and still can be the tool for achieving our collective aspirations.

It's up to us to make it work for working people again.

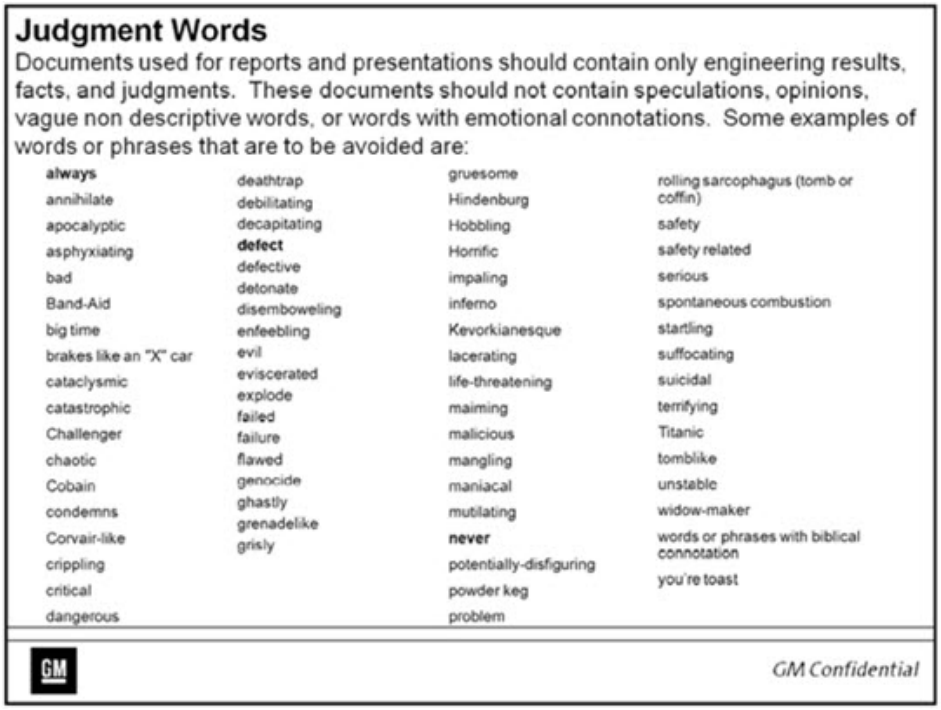
## Senate Bill Would Ensure Negligent Corporate Officials Are Held Accountable

**by Ronald White**

On July 16, Sens. Richard Blumenthal (D-CT), Bob Casey (D-PA), and Tom Harkin (D-IA) introduced the Hide No Harm Act. The legislation would require corporate officers to disclose to employees, federal officials, and the public information and warnings about serious dangers associated with product defects or unsafe work practices. Currently, criminal fines and imprisonment are rarely imposed on individual corporate executives who have knowingly concealed such crucial information, but this bill would ensure that those personally responsible for decisions leading to serious injuries or deaths are held criminally accountable.

The legislation comes in the wake of multiple cases of corporate misconduct that led to serious injuries and deaths. A recent example involved General Motors' (GM) recall of millions of automobiles with defective ignition switches. For over a decade, GM withheld information about the switches from regulators and the public. The company recently conceded that faulty switches are responsible for at least 13 deaths over the past several years, and some regulators believe the actual death toll may be much higher. GM has moved to settle more than 300 claims related to these deadly ignition switches.

On May 16, the Department of Transportation and the National Highway Traffic Safety Administration slapped GM on the wrist with a $35 million civil fine, amounting to less than a day's revenue for the company. Although GM executives were aware of the defects and even asked employees to conceal the safety concerns from the public, not one of them will have to pay a criminal fine or face time in prison. A leaked slide from a 2008 training presentation, shown below, lists words and phrases that GM executives wanted employees to avoid when communicating about defective vehicles and parts. The list includes: "deathtrap," "crippling," "Hindenburg," "rolling sarcophagus," and yes, "you're toast."



Only a few years prior to the GM case, Toyota similarly withheld safety defects in millions of its vehicles, which have been linked to at least five deaths. Instead of informing and warning people about potential unexpected acceleration in some of their cars, Toyota officials chose to intentionally mislead the public by concealing their knowledge of the defective vehicles. Toyota executives paid a civil fine (albeit a significant one at $1.2 billion) and washed their hands of the situation. But again, not one corporate official faced criminal penalties.

Dangerous product cover-ups aren't unique to the auto industry. In the pharmaceutical sector, Merck withheld information on the risks of the painkiller Vioxx from doctors and patients for more than five years, resulting in an estimated 88,000 to 139,000 heart attacks, approximately 30 to 40 percent of which were fatal.

We need to ensure that companies take health and safety seriously and that corporate executives no longer consider loss of life a "cost of doing business" that they are willing to absorb because potential fines are paid by the corporation. The criminal penalty provisions of the Hide No Harm Act will deter corporate officers from withholding critical information and failing to warn about product defects and dangerous work practices that endanger workers and the public. By holding corporate executives personally accountable for their decisions, this legislation serves to ensure that human life is valued over a company's bottom line and executive bonuses.

**Click here to take action to support this bill.**

## Lifting the Ban on Crude Oil Exports Troubling in Light of Recent Rail Catastrophes

**by Katie Weatherford**

What do fracking, recent rail car explosions, and international trade have in common? A volatile light crude oil called "condensate."

Condensate is typically defined as natural gas trapped underground that liquefies as it comes to the surface and is classified as an ultralight, gassy crude oil. The distinction between traditional crude oil and condensate has only become relevant in recent years due to hydraulic fracturing ("fracking"), which has resulted in higher yields of condensate than traditional extraction methods.

With the growing stock of condensate and projections that the U.S. will become the world's top oil producer by 2015, many companies are looking to export this new substance overseas. But under the Energy Policy and Conservation Act of 1975, enacted in response to the Arab oil embargo, raw crude must be processed before it is exported. Under regulations issued by the Commerce Department's Bureau of Industry and Security, condensate falls within the definition of crude oil and cannot be exported unless it is first processed. The Commerce Department can issue licenses to export under certain exceptions to the law; however, these licenses are rarely granted.

Oil companies have complained that processing condensate is difficult with current infrastructure and would require a substantial investment in new equipment. As a result, many companies are calling for the current ban on exports of raw crude oil and condensate to be lifted.

Sen. Lisa Murkowski (R-AK) has also argued that the Commerce Department can take action under its existing authority by updating its regulations to remove condensate from the definition of crude oil altogether. "The Department of Commerce retains the authority to allow condensate exports by modernizing its regulations, as it has done repeatedly since the 1970s." This would mean that condensate would not need to be processed at all before it is exported.

In what may be a move toward lifting the ban, on June 24, the Commerce Department issued private decisions to allow two Texas-based companies to export condensate that has been "minimally processed" (stabilized and distilled). The Commerce Department says it is considering revisions to the existing regulations, but the recent decision does not represent a change in existing policy [subscription required to access full link]. Companies must minimally process the oil, meaning that exports of raw crude are still prohibited.

***The Commerce Department's recent decisions raise serious questions about whether the long-standing crude oil ban should be lifted without first issuing regulations that require volatile crude to be stabilized in the field before it is transported.***

Any easing of the crude oil ban is particularly troubling given recent reports that unprocessed condensate is combustible and potentially responsible for several recent explosions of rail cars carrying light crude, including last year's incident in Quebec that left 47 people dead and destroyed a town.

The Commerce Department's recent decisions raise serious questions about whether the long-standing crude oil ban should be lifted without first issuing regulations that require volatile crude to be stabilized in the field before it is transported. According to the *Wall Street Journal*, condensate from North Dakota's Bakken Shale formation is not processed in the field before it is transported via rail cars and is also the subject of ongoing investigations.

The federal government is currently considering whether stabilization should be required; however, oil companies argue that this would impose serious costs due to the equipment needed to process the light crude and may slow development of the Bakken formation.

Additional pressure to accelerate energy exports is being brought by the European Union (EU). A recently leaked trade document from the EU calls on the U.S. to agree to a separate energy chapter in the Trans-Atlantic Free Trade Agreement (TAFTA), in which the U.S. would commit to "the free export of crude oil and gas resources . . . automatically and expeditiously." Under the document, the U.S. would change existing procedures for examining the impacts of natural gas and crude oil exports, agreeing to a legally binding commitment for all exports to the EU to be granted without review.

Following the release of that document, Sen. Edward Markey (D-MA), chairman of the Senate Foreign Relations Subcommittee on International Development and Foreign Assistance, Economic Affairs, International Environmental Protection, and Peace Corps, responded, "Attempting to use a transatlantic trade agreement to scuttle established U.S. law prohibiting the export of America's oil would be a titanic mistake for our consumers, national security, and energy policy." He added, "Exporting our crude oil is not the answer for anyone but oil companies."

Lifting the crude oil ban is also likely to increase the use of fracking throughout the U.S., adding to already existing concerns about threats to public health and the environment from the practice. The potential impact on public health and the environment, as well as public safety and energy policy, must all be addressed before any decision to revise our nation's oil export policies.

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## Yet Another Chemical Plant Fire in Texas Underscores the Importance of Disclosure

**by Amanda Frank**

On July 7, a fire broke out at a Chevron Phillips chemical plant in Port Arthur, Texas injuring two workers and frightening neighbors in the largely residential neighborhood. While the cause of the fire is still being determined, the incident highlights the danger posed by facilities that store large amounts of chemicals and the importance of providing the public with information on chemical threats in their communities.

Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) require facilities that handle large amounts of chemicals to report annually to state and local emergency planning committees. This information helps communities prepare for and prevent potential chemical disasters and is also made available to the public so that they can assess the potential risk of chemical exposures. Congress passed EPRCA after the 1984 disaster in Bhopal, India, where a gas leak at a pesticide plant killed more than 2,000 residents.

However, Texas Attorney General Greg Abbott issued a ruling in May that undermines the public's ability to access this important information. Abbott's ruling makes some of the information gathered under the right-to-know law, known as "Tier II reports," confidential, citing a state statute passed

following the 9/11 terrorist attacks that restricts information on the location, identity, and quantity of chemicals that are "more than likely" to be employed in building a weapon of mass destruction.

By stating that information on chemicals stored in Texas communities should remain secret for security reasons, Abbott singlehandedly blocked residents' access to data that could help them take appropriate steps to reduce risks from chemical disasters.

Abbott, who is currently running for governor of Texas, faced criticism for his ruling, including complaints from residents who want access to information about facilities in their neighborhoods. In response, Abbott stated that residents still have the right to know *but that the burden now falls on them to do the investigative work*. His advice? Drive around your neighborhood and ask the facilities themselves what sort of chemicals they have on hand. And if facility managers refuse to let you on site, you can always call or e-mail them.

Not only is this approach an abdication of the state agencies' responsibility to make hazard information available to the public, it is likely to be futile, as a Dallas news channel recently demonstrated. It also undermines accountability, as facilities could refuse to disclose or offer an incomplete picture of the chemicals they have on hand.

Abbott's ruling has gained additional media attention after it was revealed that he received over $75,000 in contributions from Koch Industries and one of Charles Koch's sons following the fertilizer plant explosion at West, Texas in April 2013. Koch Industries has a fertilizer division and owns several plants in Texas. An industry spokesperson denied the link between their donations and Abbott's ruling, but the story has been picked up by both local and national media outlets, including a 22-minute feature on *The Rachel Maddow Show*.

Abbott's stance on chemical secrecy is out of touch with the concerns of Texas residents, who have witnessed several chemical accidents since the disaster at West, including a fertilizer plant that burned to the ground in downtown Athens in May. Moreover, limited Texas zoning laws enable large facilities like the ones in West and Athens to exist side-by-side with residential homes, schools, and nursing homes. The Chevron plant that ignited in Port Arthur on Monday is within one mile of at least three schools and is near countless homes and an adjacent park with a playground. The fact that many Texans live next door to such potentially dangerous facilities makes public access to chemical information even more imperative.

Leaders in Texas should be working to increase transparency of chemical facilities within their state, not blocking access to information gathered under our nation's chemical right-to-know law. Without this vital information, residents cannot protect themselves, their families, and their communities from preventable tragedies.

## Momentum Growing as Campaign Finance Amendment Clears Senate Committee

**by Lukas Autenried**

On July 10, the Senate Judiciary Committee voted to support S.J. Res. 19, a proposed constitutional amendment that would restore the ability of Congress and the states to regulate money in elections. The amendment was introduced by Sen. Tom Udall (D-NM) amid growing concerns over the influence of money in politics, particularly following the Supreme Court ruling in *Citizens United v. Federal Election Commission*.

The committee's vote to approve the proposed amendment marked an important milestone and opened the door for the proposal to be considered on the Senate floor. Marge Baker of People for the American Way commented:

This vote is an important step forward for the movement to take back our democracy from billionaires and corporations. It's also good news for the overwhelming majority of ordinary Americans who want to see our elected officials loosen big money's grip on our democracy.

Sens. Bill Nelson (D-FL), Claire McCaskill (D-MO), and Maria Cantwell (D-WA) are the most recent cosponsors of the proposed amendment, bringing the total number of cosponsors to 48. Those numbers bode well for a full Senate floor vote this fall, as Senate Majority Leader Harry Reid (D-NV) has promised.

The amendment also cleared a hurdle in the House of Representatives on July 15 as Reps. Ted Deutch (D-FL), Donna Edwards (D-MD), and Jim McGovern (D-MA) introduced an identical version. The Democracy for All Amendment (H.J. Res. 119) has been referred to the House Committee on the Judiciary for consideration. To date, the House version of the amendment has 108 cosponsors.

During a July 15 press conference, Deutch said, "The sad truth is that for most Americans, their influence in our government and their faith in this democracy have diminished each time the Supreme Court has ruled that more money can come into our elections."

As momentum continues to grow in support of curbing the influence of money in politics, we welcome the debate. Our government should protect the democratic process and ensure that elected officials listen to everyone, not just wealthy interests and secret donors. Be sure to share your views on the issue with your members of Congress.



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