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Nonprofits Registering Voters Face New Restrictions

A growing number of nonprofit organizations in states across the country are finding new rules make it difficult or impossible to continue their nonpartisan voter registration efforts. In Florida, the League of Women Voters and a host of other groups have sued the state to stop enforcement of rules that make such voter registration drives substantially more difficult and risky.

The League of Women Voters of Florida has worked to encourage eligible voters to register to vote since 1939. After a new law took effect in January, however, the group suspended all of its voter registration programs, blaming what it calls the Florida law's "punishing

and complicated regime of deadlines and fines."

In May, the League and other plaintiffs filed *League of Women Voters et. al. v. Cobb et. al.* in the U.S. District Court in Miami to stop enforcement of the new law. The plaintiffs include community, religious, labor and educational groups. They describe their concerns in a May 18 release: "For each and every voter registration form submitted more than ten days after the form was collected from a prospective voter, the government will impose a fine of $250, while for each registration form submitted after the passing of a registration deadline, the fine is $500. If a registration form is not submitted, for any reason, the fine per form jumps to $5,000.

Most chilling to plaintiffs' activities is the law's adoption of a 'strict liability' legal standard, meaning that no extenuating circumstance -- not even destruction of an office by a hurricane -- will excuse the failure to submit a registration form. Plaintiffs say the impact of multiple fines would devastate the budgets of many non-partisan voter registration groups."

The complaint in the suit explains that the new laws and fines only apply to nonpartisan groups, exempting political parties, including the Surfers Party. However, plaintiffs say there is no evidence of more lost or late voter registration forms from non-party groups than from political parties. They also point out that this uneven treatment is unconstitutional and could "devastate the budgets of many nonpartisan voter registration groups."

Overall, the impact will be that, "These fines will quickly erase from the state some of the most basic rights of American democracy: the non-partisan voter registration table at the mall or bus stop; the unaffiliated registration advocate at a school or workplace; and the encouragement to participate in elections often found in churches and synagogues," according to Elizabeth Westfall of the Advancement Project.

The Florida suit may be only the first in a number of similar challenges to laws negatively impacting **nonpartisan** voter registration initiatives throughout the country. A fact sheet from the Brennan Center notes that similar laws have been recently enacted in Colorado, Ohio, Maryland and New Mexico; with Arizona, Georgia, Missouri, and other states considering similar bills. In all cases, the laws seem to make voter registration efforts substantially more difficult, or perhaps impossible, for organizations who have "dramatically increased voter registration rates among groups that have traditionally faced the greatest barriers to voting."

Lobby Reform Update

Although GOP leaders are promising a final lobby reform package by the July 4 recess, a group of Republican Senators has broken rank and is threatening to filibuster the lobby reform conference report if it includes a provision expanding regulation of independent 527 organizations.

On June 9, a group of seven senators sent a letter to Senate Majority Leader Bill Frist (R-TN) opposing the inclusion of a provision on independent political committees (527s) in the lobby reform bill expected to go to conference in early July. The 527 provision, included in the House version but not in the Senate bill, would subject 527s that work on federal elections to essentially the same contribution limits and reporting requirements as federal candidate campaigns and political parties. Originating out of Sen. George Allen's (R-VA) office, the letter has also been signed by Sens. Sam Brownback (R-KS), Tom Coburn (R-OK), Jim DeMint (R-SC), Mike Enzi (R-WY), John Sununu (R-NH) and David Vitter (R-LA).

The letter defends 527 organizations, calling them "nonprofit advocacy groups" that "pose no threat of corruption as they are required to disclose all donors, barred from urging voters to support or oppose a candidate, and prohibited from coordinating with political parties or elected officials."

Additionally, the letter argues, "Republicans do not need, and should not attempt, to muzzle their opponents. The increase in free speech over the last two decades made possible by the growth of talk radio, cable TV and the Internet has benefited our Party, which allowed us to promote individual freedom and opportunity that has led to unprecedented prosperity for our nation."

While most of the opposition to the 527 provision has come from Democrats, some Republicans and conservative groups have begun to oppose it. In April, members of the House Republican Study Committee, led by Rep. Mike Pence (R-IN), opposed H.R. 513, a stand alone 527 reform bill that has now been married with the lobby reform legislation that passed the House. David Keating, executive director of the Club for Growth, conservative 527, has also come out against expanding 527 regulation, saying last week it would award extra points on its scorecard - annual ratings of lawmakers - to members of Congress that oppose regulating independent 527 groups.

What this means for the lobby reform conference is unclear. Although Frist and House Speaker Dennis Hastert (R-IL) stated on June 9 that they have asked lobby reform conferees to have a final package ready by the July recess, the House still has yet to name conferees to meet with the Senate, which named its conferees last month. Hastert has said

that he will name conferees before the July recess. There is speculation that he is avoiding naming conferees until staff behind the scenes come to agreement (called pre-conferencing) on specific provisions of the bill.

FEC Won't Change 527 Rules This Year

The Federal Election Commission (FEC) on May 31 announced it will provide a better explanation and clear justification of its 2004 rule limiting regulation of 527 independent political committees. The move can in response to a court order that calling on the FEC to either explain the rule or open up a new rulemaking providing more limits. The timing for the FEC action is not clear.

Some campaign finance reform groups have advocated applying federal contribution limits to all independent 527s. The FEC's August 2004 rule requires 527s to follow federal limits when raising funds for support or opposition to specific federal candidates. Contributions from such individuals are subject to a $5,000 limit and must be reported to the FEC. The 527 group must also pay for voter mobilization activities and administrative expenses, including salaries and overhead, with 50 percent hard money funds. There is no limit on other funds raised by the 527s, and such contributions are disclosed to the IRS, not the FEC. The rule was approved in August 2004 after a controversial rulemaking that generated over 100,000 comments from the public.

The 2004 rule was challenged in a suit filed by sponsors of the Bipartisan Campaign Reform Act of 2002 (BCRA) and the Bush-Cheney campaign, who claim BCRA requires the FEC to adopt broader regulations. The court order instructed the FEC to provide a better explanation of the 2004 rule or initiate a new rulemaking. The FEC announced that it will not appeal the court decision, and it will keep the current rule in force during this election year.

The FEC is, thus, required to provide greater justification for its 2004 rule. No timetable has been given for when the FEC will publish the new explanation and justification for its rule. Advocates of stricter regulation, such as Democracy 21's Fred Wertheimer, have already said they are unlikely to accept the clarifications, and the issue will likely end up back in court. These same groups are advocating legislative solutions to "rein in" 527 groups. Their latest target is lobby reform legislation. (Link to Jennifer's story about lobby reform bills.)

In related news, on June 5 a federal court ruled that the FEC can proceed with its enforcement case against the Club for Growth for violating the current 527 rule, which took effect on Jan. 1, 2005. It alleges that the group solicited contributions for specific

federal candidates, raising more than $4 million in 2004 from donors that exceeded the $5,000 contribution limit.

Federal Court Rules Against Taxpayer-Funded Religious Programs for Inmates

A federal judge has ruled that an evangelical Christian program operating in an Iowa state prison promotes religion with state funds, in violation of the Establishment Clause of the Constitution. The court ordered the program to reimburse the government $1.5 million.

On June 2, Judge Robert W. Pratt of the U.S. District Court for the Southern District of Iowa found a prison pre-release program operated by Prison Fellowship Ministries (PFM) "literally established an Evangelical Christian congregation within the walls of one of its penal institutions." He also found "no adequate safeguards present, nor could there be, to ensure that state funds were not being directly spent to indoctrinate Iowa inmates."

In his ruling in Americans United for Separation of Church and State v. Prison Fellowship Ministries , Judge Pratt enjoined PFM from operating the InnerChange program within the Iowa Correctional Facility as long as it is supported by government funding. Pratt denied the defendants' request to alter the program, reasoning that it "would encourage the Court to engage in micro-management of a state correctional agency--something that is discouraged except in the most necessary of circumstances." In addition, Pratt ordered PFM to reimburse the state the "full amount of state funds paid to the program since the inception of its contractual relationship with the Dept. of Corrections in 1999," amounting to over $1.5 million.

Faith-based organizations are barred from using direct government financial assistance to support any "inherently religious" activity, including worship, religious instruction, and proselytization. An organization that engages in inherently religious activities must offer those services to beneficiaries separately in time and location from programs and services supported by non-private funds.

In his opinion, Pratt concluded that:

1. the prisoners in the program were subjected to an intense, Christian-based program in which there were no secular alternatives or alternatives for other faiths,
2. the non-religious content could not be separated from the faith-based content,
3. the prisoners who participated in the program received tangible benefits other prisoners did not receive, and
4. the state knowingly chose a religious organization to carry out a state function,

thus burdening the program staff with the same responsibilities of any state employee, including the prohibition against using state resources to teach others their form of religion.

These factors led Pratt to find that the state had committed "severe violations" of the Establishment Clause. Pratt remarked, "The level of religious indoctrination supported by state funds and other state support in this case in comparison to other programs treated in case law...is extraordinary."

PFM president Mark Earley said the organization will file an appeal with the Eighth Circuit Court of Appeals this week. In a statement Early alleged, "This decision, if allowed to stand, will enshrine religious discrimination. It has attacked the right of people of faith to operate on a level playing field in the public arena and to provide services to those who volunteered to receive them."

American United's Executive Director Barry Lynn countered in a statement, "Tax funds cannot underwrite conversion efforts. The bottom line is government has no business paying for religious indoctrination and conversion programs in prisons and any other tax-funded institutions".

Pratt ordered the injunction and repayment suspended pending the appeal, meaning the penalties will not take effect during the appeal process.

Sunset Commissions Update: Take Action

Reports coming from GOP leadership about the timing of sunset commission legislation are conflicting, with one report suggesting that a bill could be considered in the House as early as next week, but agree all the same that some vehicle will move this summer.

In the past few days, rumors have circulated that House Majority Leader John Boehner (R-OH) was leading efforts to combine differing sunset commission bills, with the Todd Tiahrt (R-KS) bill (H.R. 2470) the centerpiece bill to be supplemented by language from the other leading bills.

Reports emerging from Boehner's office present differing pictures about the possible timeline for House consideration of sunset commission legislation. Some Hill sources suggest that it is unlikely the negotiations have produced a final vehicle ready for release next week. Meanwhile, *CongressDaily* reports that floor consideration of a sunset commission proposal could take place as soon as next week, immediately after the House

votes on the line-item veto.

OMB Watch, Public Citizen, and a number of other groups have organized a broad coalition to oppose sunset commission legislation. Because GOP leaders have not indicated which bill will be moved forward, but clearly intend to strong-arm a bill through, OMB Watch has created a sunset commission resource center and encourage community groups visit it frequently. Individuals can also take action and call on their representatives to oppose these dangerous proposals.

Legislative Update: Plain Language and GAO Reg Review

The House Government Reform Committee reported out two bills relevant to regulatory policy: one to facilitate compliance by encouraging agencies to draft regulations in plain language, and another to bring the Government Accountability Office into the process of regulatory reviews.

The bills moved after a June 8 markup session.

Regulation in Plain Language Act of 2006

The committee reported without amendment H.R. 4809, the Regulation in Plain Language Act of 2006, which requires that federal agency rules be written in plain language. A bipartisan bill backed by both Reps. Candice Miller (R-MI) and Stephen Lynch (D-MA), the Regulation in Plain Language Act was designed to make regulation compliance and enforcement more effective and to encourage clarity in rulemaking. The use of plain language is expected to reduce the business practice of using statutory ambiguity in order to avoid regulation and save multiple parties money in their attempts to interpret federal regulations.

The bill would amend the Paperwork Reduction Act (title 44, chapter 35 of the U.S. Code) to create general standards for plain language and create a new staff position in the agencies to encourage regulatory drafting in plain language. The new standards define plain language as clear, straightforward language, understandable to the intended reader. The bill encourages the use of short phrases, grammatical clarity, and visual aides.

Backers of the bill depart from the usual anti-regulatory trend by seeking to make compliance less costly without reducing the protections that the public enjoys. Proponents argue that when federal regulations are clear enactment is sure to increase, along with higher expectations that allow for stricter enforcement. The shift encourages fairness, allowing a greater proportion of the population to understand regulations, without the

need for expert interpretation. The goal is to create concise yet intelligent regulations that are easy enough for everyone to follow and clear enough to reduce manipulation or avoidance.

Truth in Regulating Act Amendment

The committee also reported out a bill to amend the Truth in Regulating Act. The Truth in Regulating Act of 2000 authorized a pilot project in which the Government Accountability Office would, upon request, review agencies' regulatory impact analyses for economically significant rules. The project was never funded, and GAO never conducted any reviews.

H.R. 1167 would amend the Truth in Regulating Act to make the pilot project permanent. The amendment would simply strike the "pilot project" heading and institute the authority permanently.

In committee mark-up the bill was altered by Rep. Henry Waxman (D-CA), to limit the authorization to only 3 years, dependent on funding of no less than $5 million per fiscal year. The bill was reported out with this amendment, and the title will now read, "A bill to amend the Truth in Regulating Act to authorize an additional period of 3 years for the pilot project for the report on rules."

States Losing Ability to Protect Public Due to Federal Preemptions

Despite the party's repeated use in recent years of states' rights rhetoric, the GOP-dominated Congress and Bush White House have been assiduously working to eliminate the ability of state governments to protect the public.

Preemption Through Congressional Act

A new compilation of congressional activity reveals that Congress has voted 57 times to preempt state law and regulations in the last five years, including preventing states from instituting health, safety, and environmental standards.

According to a report released June 6 by House Government Reform Committee ranking member Henry Waxman (D-CA), those votes have resulted in 27 laws overriding state laws and regulations, including 39 preemption provisions.

Many of those preemptions gut state standards for consumer protection, such as safeguards against food contamination, as well as environmental, health, and safety standards. The enacted preemptions also take power away from state courts and limit

state choices in deciding social policies.

In perhaps the most famous example of preemption in the past year, both Congress and the Bush administration stepped into the dispute over the end of life decision for the family of Terry Schiavo. Despite the state court repeatedly upholding Mr. Schiavo's decision to remove the feeding tube for his wife who had been in a persistent vegetative state since 1990, Congress passed Pub. L. 109-3, bringing the family dispute to federal court "notwithstanding any prior state court determination and regardless of whether such a claim has previously been raised, considered, or decided in State court proceedings."

The state judge refused to uphold the congressional act, saying that "Theresa Schiavo's life and liberty interests were adequately protected by the extensive process provided in the state courts." This decision was upheld by the federal circuit court. While Congress was unsuccessful in this instance, other preemptions of state and local authority have been implemented.

Preemptions passed by Congress include the following:

- *Preemption of drug liability laws* Cases against drug manufacturers for injuries are generally brought to court at the state level. The 2006 Department of Defense Appropriations Act (Pub. L. No. 109-148), however, severely limits the ability of claimants to sue for injuries caused by drugs or vaccines considered to be "countermeasures" against a flu or epidemic, as decided by the Secretary of Health and Human Services.
- *Preemption of Firearms Trace System* The 2006 Science, State, Justice, Commerce, and Related Agencies Appropriations Act (Pub. L. No. 109-108) limits state use of the Firearms Trace system, a database used by law enforcement officers to identify guns routinely used in violent crime or disproportionately associated with accidents. The provision bars state and local law enforcement agencies from using the database to track gun use for anything other than a criminal investigation.
- *Preemption of laws limiting SPAM* The 2003 CAN SPAM Act overrides laws in 38 states that protect against unsolicited email messages. The federal law is much weaker than many of the state standards that require consumers to affirmatively "opt-in" before receiving commercial messages.
- *Preemption of vicarious liability laws* The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. No. 109-59) overrides state laws that hold the owner of a vehicle liable for an accident when the car is driven by a renter or a lessee. In states with high tourism and high car rentals, it is often

required that the owner of the vehicle be held liable in order to protect accident victims in cases in which the vehicle is insured but the actual driver is not. At the time the law was enacted, sixteen states had such laws.

- *Preemption of open government laws* The Homeland Security Act of 2002 created the new Department of Homeland Security (DHS), the biggest government reshuffling since 1947. The law also contained a section entitled Critical Infrastructure Information (CII), intended to create incentives for companies to "voluntarily" submit information about the vulnerabilities of "critical infrastructure." To accomplish this result, the law preempts state and local disclosure laws and creates an overly restrictive information program that will provide corporations secrecy and immunity, and prevent state government action to protect the public.
- *Preemption of environmental law* Energy Policy Act of 2005 (Pub. L. No. 109-58) scraps state and local government's authority over environmental and land use policy. For example, the act limits the extent to which states can require cleaner burning fuels in automobiles. The bill also takes the authority to approve the siting of transmission lines out of the hands of state and local government.

Preemption Through Regulation

Not only is state authority being threatened by congressional action, but the White House has also limited the role of the states through regulation and executive decisions. Perhaps the most troubling trend in regulatory preemption is being called "stealth tort reform"--the decision to preempt the ability of state courts to hear tort suits arising from cases covered by the federal regulation. U.S. PIRG has been documenting many such cases.

Floor, Not Ceiling

Federal law and regulation is able to solve national problems through national solutions that impact and benefit all members of society. At the same time, states have long been pioneers in advancing groundbreaking social policies. Allowing states the flexibility to meet particular local needs while requiring a basic level of public protection for all citizens has long been an important issue for the balance of power between federal and state governments.

The answer has long been "floors, not ceilings"--turning to the federal government for the base level of protection, and allowing the states to offer their citizens more stringent safeguards. Without any sufficient showing of a compelling need for national uniformity, these acts of Congress and the White House turn the federal/state balance around, suppressing states' abilities to provide services and protections that go above and beyond

federal laws and regulations.

OMB Watch Tells Congress PART Should Remain Insignificant

OMB Watch told Congress today that the Bush administration's Program Assessment Rating Tool (PART) draws biased conclusions about federal program efficacy and should thus continue to be largely ignored by Congress.

Adam Hughes, OMB Watch's director of federal fiscal policy, testified on PART before a Senate Homeland Security and Government Affairs Subcommittee, during a hearing held by Committee Chair Tom Coburn (R-OK) to investigate why PART is not more widely used by Congress.

Hughes raised concerns that PART is inherently biased toward OMB's perspective, and ultimately that of the White House, regarding expectations for success. Because of its subjectivity, according to Hughes, PART allows OMB considerable power to manipulate political and policy outcomes.

"Both by the design of the tool and as the mechanism is implemented, PART systematically ignores the reality of federal programs and judges them based on standards that are deeply incompatible with the purposes that federal programs are expected to serve," Hughes explained. "As one agency contact described it, PART assessments are tantamount to a baseball coach walking to the mound to remove his pitcher and then chastising him for not kicking enough field goals."

Hughes went on to describe PART as transferring to the White House authority over an area of government that is the purview of Congress under the U.S. Constitution. Hughes also maintained that Congress already has the tools to execute necessary program oversight, evidenced by the fact, which Coburn was quick to point, that Congress largely ignores PART scores in the budget process.

"PART continues a troubling trend we have seen in other executive branch initiatives and even congressional proposals--namely, a trend to arrogate increasing power to the White House, even in areas that by constitutional design have been committed to Congress," Hughes testified. "For this reason alone, PART should be approached extremely cautiously by those outside the administration."

Clay Johnson, deputy director of OMB and a main proponent of the PART system, also testifying at the hearing, conceded that PART was a tool with many deficiencies. He

repeatedly told the committee that PART was a work in progress, admitting that PART was a very "blunt" tool for identifying inefficient programs in need of help.

Eileen Norcross with the Government Accountability Project of the Mercatus Center at George Mason University testified as well, supporting PART and encouraging Congress to give more weight to PART scores. This should come as no surprise as the Mercatus Center was instrumental to PART's creation in 2001.

Hughes concluded by advising Congress to approach PART reviews with a high degree of skepticism and use the long-established congressional structures within the oversight, authorization, and appropriations processes to conduct more thorough program review and results investigations. You can read Hughes' full written testimony to the committee here.

Senate Rejects Estate Tax Repeal; Frist Likely to Turn to Costly 'Compromise'

Last week, Senate Majority Leader Bill Frist (R-TN) failed to garner enough support for a procedural vote to move forward with debate on estate tax repeal. The Senate's reject of the motion signals lawmakers may now have realized that their priorities should reflect those of their constituents and the pressing issues facing the country, not tax breaks for multi-millionaires.

The vote was a solid victory for proponents of not only the estate tax but of a progressive, fair, and responsible tax code generally. Nonprofit advocacy groups, labor unions, think tanks, community groups, and direct service providers joined forces in a show of a resounding support for the estate tax. Over 740 organizations from all fifty states signed-on to the Americans for a Fair Estate Tax Coalition letter to the Senate, urging lawmakers to preserve the estate tax. Tens of thousands of individual citizens sent emails and made phone calls in the two weeks before the vote to hold their senators accountable to the public interest.

The vote was also a win from all Americans, demonstrating that Congress might now be growing wary of taking billions of dollars per year from federal coffers at a time of high debt, significant human need, and social spending cuts.

The June 8 vote saw 57 Senators voting in favor of moving forward with debate, and 41 voting against the cloture motion. The Republican leadership needed 60 votes to move ahead with debate on the repeal bill. Sens. Max Baucus (D-MT), Blanche Lincoln (D-AR), Ben Nelson (D-NE), and Bill Nelson (D-FL) were the only Democrats to vote in favor of

cloture Sens. Lincoln Chafee (R-RI) and George Voinovich (R-OH) voted with a majority of Democrats against cloture. Two senators, Charles Schumer (D-NY) and John D. Rockefeller (D-WV) were not present. A number of Senators who were reported to be on the fence ended up voting against the motion to proceed, including Sens. Maria Cantwell (D-WA), Patty Murray (D-WA), Mary Landrieu (D-LA), Ken Salazar (D-CO), and Mark Pryor (D-AR).

While this vote is a significant victory for supporters of the estate tax, Republican efforts to kill the tax are not dead. While plans for full repeal may have finally run out of steam, GOP leaders will now likely turn their energies to a vote on "reform" that would be just as costly. Sen. Jon Kyl (R-AZ), the Senate GOP's point man on the estate tax, is now trying to sell his fellow senators on slightly different, yet equally detrimental, version of his previous "reform" proposal. His new plan includes a 15 percent tax on inherited wealth between $5 million ($10 million for a couple) and $30 million; for estates larger than $30 million the tax would be 30 percent. The Center on Budget and Policy Priorities reports that this plan would cost the Treasury nearly $800 billion from 2012 to 2021 when counting the cost of additional higher interest payments on the debt. This is very close to the cost of his earlier proposal providing a $5 million exemption ($10 million for couples) and a 15 percent tax rate. That proposal would have a ten-year cost of about $825 billion, coming close to the cost of full repeal- which is nearly $1 trillion over the same 10-year period.

It's unclear whether a legislative effort to gut the estate tax will emerge again this summer. Rumors have been circulating that Senate leaders could try to tie the estate tax to a separate piece of legislation that would be difficult to oppose. Two likely candidates for this approach are the immigration bill and the pension reform bill. While this scenario is unlikely, Sen. Frist could bring a compromise proposal to gut the tax to the floor at any time unless moderate senators remain steadfast in their opposition to measures that would cost the American people hundreds of billions of dollars in order to further enrich a handful of wealthy heirs.

It has also been reported that Kyl, Baucus and a group of moderate Democrats are meeting this week to discuss a compromise reform proposal. However, with Baucus also proposing a "reform" effort that would gut the estate tax, it is surprising that he is representing the Democratic caucus on this issue. If they fashion a compromise it could come to the floor immediately and they believe they would have the 60 votes needed for passage.

In his commentary on the estate tax vote, executive director Gary Bass explains the issue this way:

"OMB Watch remains nonpartisan, silent on the question of which party would

best run Washington. We are not, however, and cannot be, neutral on policy choices that harm our social and economic fabric. Repeal of the estate tax further shifts the tax burden onto the shoulders of working families. All of our elected leaders should be concerned with our nation's fiscal health and the maintenance of opportunity for all Americans, and, in honestly addressing these concerns, see the value of the estate tax...

...The 20-year campaign to repeal the estate tax will carry on, no doubt, like the well-funding machine it is. They will now adopt the language of "compromise" and "reform." Responsible lawmakers from both sides of the aisle, however, must bare in mind that, without offsets to pay for the changes, these proposals amount to nothing more than backdoor repeal and should be rejected accordingly."

Think Tank Focuses on Economic Security

The incongruity between Congress's priorities and the needs of average Americans was in stark contrast last week. As the Senate prepared to vote on estate tax repeal, the Center for American Progress held a briefing June 6 to explore the growing problem of economic insecurity facing many Americans.

Panelists speaking at the briefing were:

- Jared Bernstein, Economic Policy Institute economist and author;
- Louis Uchitelle, *New York Times* reporter and author;
- Paul Krugman, *New York Times* op-ed columnist and author: and
- Euguene Sperling, former national economic adviser to President Clinton and Center for American Progress fellow.

The rise of economic insecurity in America includes the growing risk individuals face concerning their wealth, and the diminished social safety net available to those who have fallen on hard times. The panelists touched on the ever-widening wealth gap, but also the shift, which has been stepped up in recent years, from public sector services to more selective and expensive private sector services.

Sperling defined an effective policy to counteract growing economic insecurity as one that can be judged as "lifting all boats." Policies created to spur enormous GDP growth are one thing; but, when these same policies provide opportunities and economic security across the income and wealth spectrum, they prove much more meaningful to the majority of Americans, according to Sperling.

Repeal of the estate tax, voted on June 8, is a prime example of policy that obviously

would fail to "lift all boats." On the contrary, the tax giveaway for less than 1 percent of the wealthiest Americans only lifts the yachts of the ultra-rich. While some claim repeal of the tax would give a boost to the economy and spur investment, in reality much of this would have simply further padded the savings accounts of heirs lucky enough to be born to extremely wealthy parents.

Panelist Jared Bernstein discussed policies, such as estate tax repeal, that leave the average American hanging. The policies, favored by the president and the current congressional leadership according to Bernstein, should be dubbed "YOYO economics," which stands for "you're on your own." He describes the trend toward YOYO economics in the following way:

"American politics have always been a balancing act between protecting the rights and privileges of individuals, and working together to meet profound challenges. Yet in recent years the emphasis on individualism has been pushed to the point where it is hurting our nation's standing in the world, endangering our future, and, paradoxically, making it harder for individuals to get a fair shot at the American dream."

Our economic policies, now more than ever, Bernstein explained, should reflect the model of WITT, rather than YOYO. WITT stands for "we're in this together." With WITT policies, individuals are not told by their government that they must fend for themselves. Instead of starving the beast--lowering federal revenue to the point that program cuts become necessary--Bernstein suggested a collaborative approach to meet these challenges and serve as the "rising tide to lift all boats."

Chemical Security: Moving Forward

The Senate will likely take another step this week toward establishing national security requirements for chemical facilities. The Senate Homeland Security and Government Affairs Committee is expected to mark up chemical security legislation during a business meeting this Wednesday, June 14. The frontrunner bill, co-sponsored by Sens. Susan Collins (R-ME) and Joseph Lieberman (D-CT), the Chair and ranking minority member, respectively, includes a number of important reporting requirements for chemical facilities.

The Collins-Lieberman bill, the Chemical Facility Anti-Terrorism Act of 2005, will require chemical plants and other facilities storing large quantities of hazardous chemicals to develop vulnerability assessments, security plans, and emergency response plans, all of which would be sent to the Department of Homeland Security (DHS) for review and

approval.

As previously reported in *The Watcher*, the Collins-Lieberman bill fails to include a requirement that safer technologies and procedures be implemented at facilities to reduce the threat of an accident or a terrorist attack. The bill does, however, include important public transparency and accountability requirements.

Sens. Frank Lautenberg (D-NJ) and Barack Obama (D-IL), as previously reported, have introduced the only other chemical security bill currently before the Senate. The Lautenberg-Obama bill, The Chemical Security and Safety Act, includes strong requirements that facilities consider inherently safer technologies. The bill also establishes a key role for the U.S. Environmental Protection Agency (EPA) in implementing chemical security requirements.

Some of the stronger provisions of the Lautenberg-Obama bill will likely be offered as amendments to the Collins-Lieberman bill. Sen. George Voinovich (R-OH) reportedly will also offer several amendments aimed at weakening the public accountability provisions of the Collins-Lieberman bill, replacing the public reporting provisions with blanket secrecy for the entire chemical security program.

Supreme Court Restricts Whistleblower Protections

On May 30, the Supreme Court handed down a decision in *Garcetti v. Ceballos* that could provide a disincentive for future whistleblowers on the government's payroll. The 5-4 decision declared that public employees who report suspicions of corrupt or inept behaviors in the course of their duties are not protected under the First Amendment.

Garcetti involves the actions of Richard Ceballos, a deputy district attorney from Los Angeles. In 2000, during an investigation, Ceballos determined that a sheriff's deputy had mischaracterized basic facts in order to obtain a search warrant. He brought this breach of conduct to the attention of his superiors in a memo and, subsequently, in face-to-face meetings. Later that year, Ceballos was transferred and denied a promotion. He alleged that these actions were a reprisal for exposing police misconduct and filed suit, charging that his superiors had violated his right to free speech.

Justice Anthony Kennedy--joined by Chief Justice John Roberts and Justices Samuel Alito, Antonin Scalia, and Clarence Thomas--ruled against Ceballos. Kennedy wrote in the majority opinion that the First Amendment does not apply to speech made during the course of one's duty as a public official. The Court holds that "when public employees make statements pursuant to their official duties, the employees are not speaking as

citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." (The majority opinion argued that First Amendment rights continue to apply when employees are speaking as citizens outside the context of the workplace.) Furthermore, the majority concluded that sufficient protections for whistleblowers exist in statutory provisions on both the federal and state levels without invoking the Constitution.

In their dissenting opinion, Justices David Souter, John Paul Stevens, and Ruth Bader Ginsburg, saw the facts of the case in a very different light, arguing that state-level whistleblower statutes are too weak and poorly enforced to provide adequate protections. This position has long been echoed by whistleblower advocates, many of whom find even federal whistleblower protections weakened to the point of inefficacy. The justices also found that the majority's opinion makes an unjustified distinction between government employee speech made as a citizen and speech made pursuant with official duties. Often the government employee has the citizen's interests in mind when making speech that is pursuant to one's official duty, according to the opinion.

"Would anyone deny that a prosecutor like Richard Ceballos may claim the interest of any citizen in speaking out against a rogue law enforcement officer, simply because his job requires him to express a judgment about the officer's performance?" writes Breyer. Moreover, he asked, why would a government employee be protected in voicing an opinion about an official matter that he is not associated with, but not be protected in speaking about a matter for which he has an official duty? Breyer and Stevens issued separate dissenting opinions.

Many whistleblower protection advocates are concerned that the ruling will discourage whistleblowers from bringing misconduct to the attention of their superiors. Instead, it may force government employees intent on rooting out corruption to find ways to speak as concerned citizens to the news media and the public at large, because such actions would be protected under the First Amendment.

"Public employees should be encouraged to report misconduct," stated Peter Eliasberg, Manheim Family Attorney for First Amendment Rights at the American Civil Liberties Union (ACLU) of Southern California, in an release issued shortly after the ruling. "This opinion does the opposite and can only cause government employees who are weighing whether or not to expose wrongdoing to decide to remain silent for fear of losing their jobs."

The case has been referred back to the California federal appeals court, as the Supreme Court decision refers solely to the First Amendment violations alleged by Ceballos in his

memo and did not cover the events of the meetings or his earlier testimony.

Vice President Refuses to Disclose Classification Data

For the third consecutive year, the Office of the Vice President has refused to disclose information on its security classification practices, according to a report released last month. The refusal contradicts a presidential order to disclose data on classification and declassification, issued by President Clinton and amended by President Bush in 2003.

The National Archive's Information Security Oversight Office (ISOO) is required by Executive Order 12958 to produce an annual report on statistics and analysis of the security classification program. The 2005 Report to the President documented a decrease in the number of classifications, but it also notes that "The Office of the Vice President (OVP), the President's Foreign Intelligence Advisory Board (PFIAB), and the Homeland Security Council (HSC) failed to report their data to ISOO this year."

The missing information means the ISOO report is incomplete and may misrepresent the state of classification practices at the federal level.

President Bush increased the vice president's classification authority to that of the President in 2003. Vice President Cheney, however, has also refused to report his office's classification data since 2003, so there is no way to determine if this change in authority has resulted in any change in activity.

The Office of the Vice President asserts that the order does not apply to it, even though the office regularly complied with the order before 2003. The implementing directive for ISOO states, "Each agency that creates or handles classified information shall report annually to the Director of ISOO statistics related to its security classification program." An agency is defined as any "entity within the executive branch that comes into the possession of classified information."

Steven Aftergood of the Project on Government Secrecy at the Federation of American Scientists remarked that Vice President Cheney's decision "signals an unhealthy contempt for presidential authority and undermines the integrity of classification oversight."

Vice President Cheney's refusal to disclose this information is consistent with previous positions and actions taken by the White House to limit access to records. For example, the Vice President has vehemently refused to disclose information on the highly questioned Energy Task Force, even when Congress began an investigation and several court challenges were filed.