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IN THIS ISSUE

SCRAMBLING TO OFFSET KATRINA COSTS, REPUBLICANS CONTINUE DANGEROUS FISCAL POLICY

After five years of ill-conceived and reckless tax and budget policies that have led the federal government to be deeply in debt, weak, and vulnerable, Republican congressional leaders and the White House are now talking about fiscal responsibility in the aftermath of Hurricanes Katrina and Rita. While nearly all the current proposals emerging from Congress and the administration are cloaked in the rhetoric of balancing the budget, this serves simply to hide their one-sided emphasis on shrinking the role of government through cutting spending rather than increasing revenue. This strategy will only exacerbate long-term problems and worsen the bleak fiscal outlook and economic concerns facing the country.

The calls for offsets to Katrina-related spending began on Sept. 19, when Rep. Mike Pence (R-IN), Chairman of the far-right House Republican Study Committee (RSC), sent a letter cosigned by 21 House Republicans to President Bush urging him to further cut non-defense discretionary spending. This was quickly followed by a letter from Reps. Jeb Hensarling (R-TX) and Jeff Flake (R-AZ), both members of the RSC, to House Speaker Dennis Hastert (R-IL) and former Majority Leader Tom Delay (R-TX), in which they suggest that the 2006 implementation of the Medicare prescription drug benefit be delayed by one year, in order to contain costs related to Hurricane Katrina. Many other members of Congress advocated for the re-opening of the recently passed highway transportation bill that contained over 6,000 lawmaker "pet projects" to find offsets.

Unfortunately, these proposals were just the tip of the iceberg and at a Sept. 21 press conference, the Republican

Study Committee unveiled in a 24-page scheme -- "Operation Offset" -- a historical laundry list of nearly every budget cut Republicans have proposed, imagined or yearned for over the years. The document outlined over $500 billion in cuts to a vast swath of government programs over the next five years, including significant cuts to NASA, Amtrak subsidies, the Corporation for Public Broadcasting, the Peace Corps, foreign aid, the Earned Income Tax Credit, the national park system, community health centers, agricultural subsidies, and many, many more areas. An analysis of the proposed cuts by the Center for Budget and Policy Priorities found that nearly half would come from programs serving low-income and vulnerable populations.

Operation Offset has done more to fracture the Republican Party than to rally members behind a coherent set of proposals. GOP leaders and the White House rejected the major pieces of the proposal (delaying the Medicare prescription benefit and reopening the highway bill) and called the overall proposal unrealistic. Congressional leadership and moderate Republicans saw it as a harsh criticism of government spending enacted and trumpeted by Republicans. Others feared it would divide the caucus, postponing or eliminating consensus among Republicans and showing increased disarray in the party amid a flurry of criticism of the federal government's response to Hurricane Katrina.

Yet, while seen as politically unrealistic as a package and not supported (and even reviled) by the Republican leadership, the RSC proposal has succeeded in fundamentally transforming the conversation in Congress about Katrina-related relief and reconstruction efforts. The discussion is now firmly centered around where and by how much Congress can shrink government by cutting other parts of the budget. The Bush administration took notice as well, scheduling a meeting between OMB Director Josh Bolten and Pence, Hersarling, and Flake, just one day after the proposal was released. Many believe the meeting was a blatant and somewhat desperate attempt to ease concerns about eroding support for the president among conservative Republicans in Congress and map out a course for realistic cuts to other parts of the budget.

So while the GOP has been divided about what programs to cut and by how much, they are in agreement that budget cuts, and not a rollback of the tax cuts (or even tax increases), is the first priority in attempts to offset the cost of Katrina-related spending. Over the last two weeks, Republicans have worked to bridge the gap between opposing sides of the conference and are now considering a number of different methods to cut the budget.

Some have suggested Congress should cut back on spending in the Fiscal year 2006 (FY06) appropriations bills yet to be finished. Still others sought to restrict spending for a number of months only with the enactment last week of a very unusual continuing resolution that continues funding the federal government past the end of the fiscal year.

But many members are skeptical of Congress' ability to scale back FY06 appropriations bills and the savings from the continuing resolution will be minimal compared to the reconstruction costs. To create more substantial savings, House Budget Committee Chairman Jim Nussle drew up a plan to trim non-defense discretionary spending across the board in FY06 by 2 percent and to wring additional savings out of entitlement programs through the reconciliation process.

This proposal was well received by most House Republicans, and the GOP is now counting on the fast-tracked reconciliation spending bill to provide even more cuts than were originally planned. In seeking to push the reconciliation cuts above the $35 billion outlined in the budget resolution, acting House Majority Leader Roy Blunt (R-MO) has pressured committee chairs to view their respective targets for spending cuts in reconciliation as minimums, not maximums.

Yet another roadblock may exist, as increases in reconciliation budget cuts may not be as well received in the Senate, where the budget resolution passed by only two votes in May and where many senators, Republicans and Democrats alike, have been wary of the planned $35 billion in cuts, which comes mostly from Medicaid, food stamps, and other low-income support programs. While Senate Majority Leader Bill Frist (R-TN) and Budget Committee Chairman Judd Gregg (R-NH) are working with other senators and committee chairs to consider all

options, the focus thus far in the Senate has also been solely on budget cuts.

The policies currently being promulgated by the GOP are not only reckless and shortsighted, but also run contrary to the will of the American people. In a number of recent polls, Americans have overwhelmingly rejected cuts to other parts of the budget as a way to pay for additional Katrina-related spending. Instead, most Americans strongly support canceling the planned tax cuts for those earning over $200,000 annually. If there are to be cutbacks on spending, the public supports shifting funds from spending in Iraq. The current GOP leadership is dangerously out of touch with the priorities of Americans across the country and their refusal to revisit the massive and extremely expensive tax cuts -- the easiest and most logical way to pay for Katrina-related spending -- is politically greedy and morally suspect.

Republicans in Congress have been slow to realize this, however, as they are continuing with plans to cut an additional $70 billion in taxes later this month in another reconciliation bill.

CONGRESS PASSES STARK CONTINUING RESOLUTION; MANY PROGRAMS WILL SEE FUNDING CUTS

With the end of the fiscal year looming before them, lawmakers were forced to adopt a stopgap funding measure last week to avoid a government shutdown. The measure -- called a continuing resolution (CR) -- will fund government operations for the next seven weeks. Because of the unusual structure of the CR, however, it will result in the dramatic under-funding of programs, setting spending levels at the lowest of three possible levels: the enacted totals for Fiscal Year 2005 (FY05), or either of the completed levels of the House or Senate FY06 spending bills.

The unique funding structure of the CR will result in either freezes or cuts to most government accounts. In addition, it will prohibit agencies from initiating or resuming programs not funded in FY05 or awarding new grants during the seven week CR period, which ends Nov. 18. House Appropriations Chairman Jerry Lewis (R-CA) pushed through this bare-bones CR in response to calls from congressional conservatives to hold down spending. Lewis worked hard to make sure that the CR did not include numerous special add-ons requested by his colleagues. The CR passed the House, 348-65 on Sept. 29, and passed the Senate by unanimous consent on Sept. 30.

The low funding rates in this CR, however, have a number of senators wondering aloud how programs and agencies under their committees' jurisdictions will be able to pay for the services they provide over the next two months. Senate Commerce-Justice-Science Appropriations Subcommittee Chairman Richard Shelby (R-AL), for example, has expressed concern over spending for the National Oceanic and Atmospheric Administration. The office is of particular important now as it provides both navigation and hazardous material cleanup services, and has jurisdiction over the fishing industry, which has been largely wiped out in the Gulf Coast.

In addition, Sen. Tom Harkin (D-IA), Ranking Democrat on the Labor-Health and Human Services-Education Appropriations Subcommittee, argued the unprecedented CR would result in a 50 percent cut in community service grants, which would have a devastating effect on low-income families. Other programs Harkin pointed out as being negatively impacted include heating and housing assistance, Head Start, transportation for the elderly, and help for people applying for the earned income tax credit.

In an attempt to avoid these cuts, Harkin offered an amendment to fund the Community Services Block Grant (CSBG) -- which provides low-income families with meals, transportation, job-training and heating assistance -- at FY05 levels , instead of allowing them to face a nearly 50 percent cut, as was passed by the House. (The Bush administration proposed to zero out CSBG.) Even under Harkin's amendment, funding CSBG at FY05 levels would not have allowed for increases for population growth or the effects of inflation. The amendment, however, was defeated by a 53-39 vote.

While the CR prevented a government shut down, it clearly bears the handprint of the Republican philosophy of shrinking or eliminating important government investments at any opportunity and will interrupt normal operations for many programs and agencies. A number of House Democrats spoke out against the CR at a news conference on Sept. 29. Rep. Lynn Woolsey (D-CA) commented that the CR and more generally the budget, which cuts healthcare and education programs, shows where Congress' misguided priorities lie. Rep. Jim McDermott (D-WA) told reporters that Congress is "pursuing a path that is not in the best interests of this country."

Congress Pushes Ahead With Appropriations Work

The Senate will use the time allotted by the CR to continue working through appropriations bills. Late last week, the Senate continued its work on the defense spending bill, adding $5.2 billion in emergency funds to the measure, including $3.9 billion to combat the deadly avian flu virus and $1.3 billion to bolster National Guard equipment for domestic disaster response. These additions come on top of the $50 billion already added for direct war costs (which do not count against budget caps).

The Bush administration has threatened to veto the defense appropriations bill if it falls billions short of the administration's budget request, which was $419.3 billion. A statement released by the Office of Management and Budget on Sept. 30 criticized the Senate Appropriations Committee for falling $7 billion short of the Pentagon's initial budget request.

After wrapping up work on the defense appropriations bill this week, the Senate will turn its gaze either to the Labor-HHS-Education bill or the FY06 Transportation-Treasury bill, to which the District of Columbia budget would be attached. The prospect of completing either bill during the week is uncertain, however, due to a number of contentious provisions associated with each bill, as well as highly disputed funding levels. Finally, the House and Senate are also expected to clear the Homeland Security bill this week. If completed, the bill will be only the third appropriations bill for FY06 signed into law thus far.

EPA Proposes Collecting Less Information on Toxic Pollution

EPA recently announced plans that would essentially dismantle its Toxic Release Inventory (TRI), the nation's premier tool for notifying the public about toxic pollution. The TRI annually provides communities with details about the amount of toxic chemicals released into the surrounding air, land, and water. The information enables concerned groups and individuals to press companies to reduce their pollution, resulting in safer, healthier communities. Despite the program's widely hailed success, however, EPA is proposing to significantly rolling back the program's reporting requirements.

The EPA has proposed three changes, each of which would dramatically cut information available to the public on toxic pollution. The agency is proposing to:

- Move from the current annual reporting requirement to every other year reporting for all facilities, eliminating half of all TRI data;
- Allow companies to release ten times as much pollution before being required to report the details of how much toxic pollution was produced and where it went;
- Permit facilities to withhold information on low-level production of persistent bioacculuative toxins (PBTs), including lead and mercury, which are dangerous even in very small quantities because they are toxic, persist in the environment, and build up in people's bodies.

These proposals are part of EPA efforts to reduce the amount of paperwork companies must file. In seeking to reduce the reporting burden on industry, however, EPA has been aggressively pursuing major changes to the TRI

program with little consideration of the vital information communities will lose under these changes. Many public interest groups have asserted that the TRI program does not impose any excessive or unnecessary burden on companies.

Critics see little reason to interfere with a program that has worked so well. Many credit the TRI program with encouraging companies to massively reduce the production and release of toxic waste. Since the program began in 1988, disposals or releases of the original 299 chemicals tracked have dropped nearly 60 percent. Reductions have continued even as the list of TRI chemicals has grown. This year, EPA reported that the last five years of data show a 42 percent drop in the disposal and releases of the nearly 600 chemicals now tracked under the TRI program.

In the aftermath of Hurricane Katrina, government officials, citizens and other groups used TRI data to identify potential sources of toxic storm-related releases. Critics of the proposed rollbacks believe that the Gulf Coast emergency highlights the need for more -- not less -- reporting on toxic hazards. They assert that the more information collected by government on hazardous chemicals, the safer and more prepared to deal with potential disasters citizens and first responders will be.

EPA has tried to justify its proposal to eliminate every other year of reporting by claiming the agency would save $2 million for each skipped year. The agency reasons that the saved money could be reinvested in the TRI program, thereby improving the quality and accuracy of the remaining information.

EPA is mandated by law to consider public input before making the significant changes proposed to the TRI program, and is accepting public comments for at least 60 days. Click here to submit comments and tell EPA to abandon its plans to rollback TRI reporting.

KATRINA UPDATE: GOVERNMENT'S INADEQUATE RESPONSE CONTINUES

Even weeks after Hurricane Katrina swept through the Gulf Coast, the Environmental Protection Agency's (EPA) response to the storm's aftermath continues to be grossly inadequate. The insufficiency of its testing for environmental hazards, the absence of informative health warnings for recovery workers and returning residents, and its failure to provide protective equipment all clearly point to the agency's inability to accomplish its goal of protecting public health and the environment.

According to reports from a number of sources including *The Dallas Morning News*, Gulf Coast floodwaters have been contaminated by roughly 6.7 million gallons of petroleum spilled from refineries and pipelines and between one and two million gallons of gasoline from gas stations and submerged cars. There have been at least 400 smaller oil spills. Flood waters have washed over 31 designated hazardous waste sites, at least 446 industrial facilities that use or store ultra-hazardous chemicals and 57 sewage-treatment plants.

The agency has acknowledged that it has detected elevated levels of bacteria, lead, mercury, hexavalent chromium, arsenic, and pesticides. Despite these dangers, thousands of disaster responders and returning residents are being allowed into the area without receiving any specific information about health risks, necessary precautions or warning signs of contamination. Nor has the EPA issued protective gear to people in the area, in order to prevent harmful exposures.

According to Joel Shufro, Executive Director of the NY Coalition for Occupational Safety and Health (NYCOSH), "it is irresponsible of EPA, which is a public health agency, to imply that people will be adequately protected if they use caution. EPA does not know exactly what is in the water and the air, and they certainly don't know how much there is. What is needed is not just caution, but rather precaution, and that means training and protective

equipment."

The EPA's response has been so deficient that it indicates a lack of understanding of what exactly is expected of the agency in times of crisis. The agency has yet to publicly put forward a plan delineating what it hopes to accomplish or how it hopes to bring this about. From the mission of the agency and the obvious needs on the ground, OMB Watch has developed the following recommendations, incorporating concerns of residents and groups working to protect public health and safety in the Gulf Coast region.

Recommendations:

- **Environmental Testing:** The government should conduct comprehensive environmental testing to determine the nature and extent of environmental health hazards. Testing should include air, water and soil sampling, and should be designed to track down toxic hot-spots. The government should involve citizens and community experts in the process and fund independent testing as well. Given the lack of extensive test results, the government's testing thus far has either been inadequate, poorly publicized or both.

- **Cleanup:** The government must oversee and assist in cleaning up all identified sites of toxic and hazardous contamination. Every effort should be made to identify and involve companies whose materials contributed to storm-related chemical releases. Residents and workers should not be allowed to return to contaminated sites until cleanup has been completed and government agencies have approved the location's return to use.

- **Health Monitoring:** The government should track the long-term health effects for recovery workers and returning residents. The government should aggregate the collected data and publicly report on any common problems or detected health trends. Individuals and communities should have access to their own health monitoring results. Experts fear that without adequate information a mysterious "Katrina Syndrome" will develop, similarly to "9-11 Syndrome" experienced by recovery workers at Ground Zero who were unwittingly exposed to airborne contaminants.

- **Rebuilding:** The government should fully enforce all federal and state environmental, workplace and health standards as rebuilding plans move forward. These protections are the first line of defense against serious short- and long-term health effects and should not be recklessly tossed aside to speed the reconstruction process along. Residents and community leaders should participate in the re-building of their communities. The government should not grant no-bid contracts and should make every effort to employ local companies in clean up and reconstruction.

- **Preparing Citizens:** The government should fully communicate test results and known health hazards to recovery workers and returning residents through all available means. Health warnings of possible problems, symptoms to watch for and steps to take should be aggressively distributed. Protective equipment, along with instructions on use, should also be made available to all workers in the area. Currently, residents and emergency workers are not being adequately informed or equipped before being allowed into polluted areas and some are already reporting complications from exposure, such as chemical burns.

GAG ORDERS EXTENDED; LIBRARY CONSORTIUM MUST REMAIN SILENT

The U.S. Court of Appeals extended a gag order on a library consortium that received a National Security Letter (NSL) while it considers a lower court ruling that the organization has a First Amendment right to fully participate in the discussion surrounding the USA PATRIOT Act. The gag order is preventing the NSL recipient, an unidentified member of the American Library Association, from discussing its experience openly and participating in the broader debate about the controversial legislation.

The lawsuit specifically challenges the NSL provision of the PATRIOT Act that allows the FBI to demand a range of records without any judicial oversight. The NSL gag order prevents the recipient from speaking out about personal experiences with the law. The ACLU sought an emergency court order to lift the gag order, so the client could participate in meaningful discussions of the PATRIOT Act with Congress, the press, and the public. The government argued that the gag order blocked the release of the client's identity, not his ability to speak about the law itself, and that revealing the client's identity could jeopardize a federal investigation into terrorism and spying. U.S. District Court Judge Janet Hall ruled the gag order caused immediate and irreparable harm in preventing the group from revealing the fact that it received the National Security Letter. Judge Hall found that the specific group having received an NSL letter is relevant to the national debate about the PATRIOT Act and that its speech as a recipient would be viewed differently than the speech of a non-recipient. The ruling concluded the act did infringe upon the plaintiff's speech rights.

The American Civil Liberties Union (ACLU), who is also a plaintiff in the case, representing "John Doe," filed the lawsuit on August 9 against the U.S. Department of Justice. The case was originally under seal in U.S. District Court in Bridgeport, Connecticut. The U.S. Court of Appeals set an expedited schedule for appeal, bearing in mind that Congress is set to take up final discussion of PATRIOT Act reauthorization in the next few weeks.

Read more about the case.

Sign the ACLU petition to urge Attorney General Alberto Gonzales to stop preventing librarians from participating in the PATRIOT Act debate

SUPREME COURT, FEC TAKE ON REGULATION OF ISSUE ADVOCACY

On Sept. 27, the Supreme Court accepted an appeal from the Wisconsin Right to Life Committee (WRTL) that challenges the constitutionality of federal campaign finance restrictions as applied to genuine grassroots lobbying communications. Oral argument in the case is expected in early 2006. Meanwhile, more than 100 nonprofits submitted comments to the Federal Election Commission (FEC) on its reconsideration of an exemption from its "electioneering communications" rule for groups that are exempt under Section 501(c)(3) of the tax code. Comments stressed the need to protect the grassroots lobbying and advocacy rights of nonpartisan groups. A public hearing will be held on Oct. 19 and 20.

The Bipartisan Campaign Act of 2002 (BCRA) created a new bright-line "electioneering communications" rule that bars corporations, including nonprofits, from airing broadcasts that refer to federal candidates within 60 days of a federal election, or 30 days of a primary. In October 2002 the FEC exempted 501(c)(3) organizations because of their nonpartisan character. As a result, these groups did not have to stop airing grassroots lobbying or educational messages that mention federal candidates during the 2004 election.

However, other nonprofits, including action organizations like WRTL that are exempt under Section 501(c)(4) of the tax code, are subject to the rule, regardless of the nature of their broadcast message. In the summer of 2004, WRTL began running an ad asking Wisconsin residents to call their U.S. Senators (Democrats Herb Kohl and Russell Feingold) and urge them not to support filibusters of judicial nominees. According to WRTL attorney James Bopp Jr., lead counsel for the James Madison Center for Free Speech, the ads "did not state either Senator's position on the filibusters, nor their political affiliation, nor any words supporting or opposing either Senator and made no reference to the upcoming election."

Feingold was running for re-election; so, as the 60-day blackout period under the electioneering communications rule approached, WRTL filed a lawsuit asking for an injunction against application of the rule to these facts. The challenge was limited to the law "as applied" to their grassroots lobbying effort. (The Supreme Court had upheld the

general provisions of the law in December 2003 in *McConnell v. FEC*.) The District Court rejected WRTL's argument that the Supreme Court did not preclude "as applied" challenges when it upheld the rule generally. It also found that, even if the challenge were permitted, the electioneering communications ban is constitutional as applied to grassroots lobbying.

As a result of this ruling, WRTL discontinued the ads after August 15 and appealed to the Supreme Court. The court will be considering two issues:

- whether challenges to specific applications of the electioneering communications rule are allowed, and
- whether WRTL's grassroots lobbying ads must be exempted from the rule for constitutional reasons.

In a press release, Bopp stated the Supreme Court has indicated it "is willing to seriously consider whether campaign finance laws can be used to insulate federal candidates from genuine grassroots lobbying about upcoming votes in Congress."

The fact that the Supreme Court agreed to hear this challenge only a few years after upholding the constitutionality of BCRA, coupled with the court's changing composition may signal stronger interest in the First Amendment ramifications of campaign finance laws. In the past the court has decided many campaign finance decisions, including *McConnell*, by a 5-4 vote.

Charities Ask FEC to Keep Exemption for 501(c)(3) Groups

The FEC is conducting a rulemaking proceeding to review the "electioneering communication" exemption for 501(c)(3) organizations, after it was the subject of a court challenge by BCRA's sponsors. The court sent the rule back to the FEC for reconsideration to address whether it should leave enforcement to the Internal Revenue Service (IRS), and whether this would result in exempt broadcasts that "promote, support, attack and oppose" a federal candidate. However, the FEC did not define what it means by the "promote, support, attack and oppose" standard, making responding to many issues raised by the proposed rule difficult if not impossible.

OMB Watch filed comments that urged the FEC to:

- Exempt 501(c)(3) organizations that are in compliance with Internal Revenue Service (IRS) rules
- Use IRS rules to define what is and is not a partisan broadcast communication for a 501(c)(3) organization. There must be one body of law governing nonprofit communications;
- Publish a new proposed rule for public comment if it proposes a definition under the "promote, support, attack, or oppose" standard that is not based on IRS rules.

OMB Watch stressed that compliance with the IRS ban on intervening in elections effectively prevents 501(c)(3) groups from supporting or opposing candidates. On the other hand, the comments note that these groups have a *constitutional right* to support or oppose policies and legislation. The comments criticize the proposal, because "it does not distinguish between references to a candidate in his or her capacity as a candidate and references to public officials acting in their official capacity. It could mean grassroots lobbying messages that ask people to call a senator and urge him or her to change a past position on a bill are considered partisan attacks on that senator. This approach would have a chilling effect on constitutionally protected speech."

The comments challenged the need for restrictions on 501(c)(3) organizations, as "there is no anecdotal record from the 2004 election that indicates abuse of the rule. While charities may have supported or opposed ideas or legislation, they have not supported or opposed candidates."

A letter signed by 64 charities also asked the FEC to preserve the exemption, noting that "FEC rules should

regulate federal campaign finance, not legitimate public policy debates." The letter pointed out that, "research on so-called sham issue advocacy has never uncovered abuses by 501(c)(3) organizations... Absent a record of abuse, there is no justification for limiting fundamental constitutional speech rights of these organizations. Speculation about the potential for loopholes does not equal a record of abuse. Indeed, restrictions aimed at preventing an unthreatened harm amounts to a prior restraint on speech."

Whatever rule is eventually approve by the FEC could be effectively overruled by the Supreme Court in the WRTL case.

NONPROFIT ANTI-ADVOCACY LANGUAGE PROPOSED FOR HOUSING BILL

Supporters of H.R.1461, the Federal Housing Finance Reform Act of 2005, are optimistic it will go to the House floor soon, without nonprofit anti-advocacy language proposed by a group of conservative Republicans. The language would have disqualified any nonprofit that lobbies or carries on other advocacy activities from applying for grants under a proposed new affordable housing program.

On May 25, the House Financial Services Committee passed H.R. 1461, a proposal to strengthen oversight of government-sponsored enterprises (GSE), such as Fannie Mae. The bill creates an independent regulator for the GSEs known as the Federal Housing Finance Agency (FHFA). The legislation is, in large part, a response to accounting irregularities at Fannie Mae and Freddie Mac that came to light in 2004.

Financial Services Chairman Michael Oxley (R-OH) and Financial Services Capital Markets Subcommittee Chairman Richard Baker (R-LA) modified the bill to create an Affordable Housing Fund (AHF). Fannie Mae and Freddie Mac would be required to contribute 5 percent of their after-tax income to this fund. The provision, which prompted committee Democrats to vote for of the bill, has been the center of negotiations between the sponsors and the Republican Study Committee (RSC), which is comprised of conservative House members. RSC members opposed the fund, claiming it would harm private enterprise. After failing to stop the bill in committee, members of the RSC contended that money from the fund will be used to "finance third-party advocacy groups that have agendas far beyond simply increasing affordable housing for low-income Americans." Rep. Tom Feeney (R-FL) took an even stronger tone, explaining that he would "rather burn the money then give it to advocacy groups."

The RSC wrote to then-Majority Leader Tom DeLay (R-TX), opposing the AHF and asking that the bill "not be scheduled for consideration by the full House until these concerns were addressed in the appropriate manner." DeLay held up the floor vote on the bill, but has since stepped aside as Majority Leader after being indicted in a Texas campaign finance case.

Oxley and Baker are opposing inclusion of the RSC's suggested anti-advocacy language. Along with Rep. Bob Ney (R-OH), they circulated a letter on Sept. 20 to colleagues, entitled "The Truth About the Affordable Housing Fund." The letter clarified misleading information about the AHF put forward by the Republican Study Committee, countering RSC accusations that grants will be used for political advocacy, that the AHF is a "slush fund," and that it will become an entitlement fund.

To assuage the RSC, Oxley and Baker added a provision that restricts the funds to "the production, preservation, and rehabilitation of rental housing" and "the production, preservation, and rehabilitation of housing for homeownership." Additionally, administrative and outreach costs are limited to the costs of maintaining the affordable housing fund and carrying out the program. Any organization found to be violating the provision would be permanently banned from receiving additional grants from the fund.

Critics of these restrictions believe they hinder the free speech of AHF grantees, forcing them to choose between

receiving federal grants or speaking out on behalf of the people they serve. Many nonprofit groups provide valuable information and perspective that enable Congress and federal agencies to make more informed decisions. Nonprofit advocates fear this would be severely restricted by the language proposed by the RSC. In contrast, the Oxley provision, a restatement of current law, provides ample protection against violations of the prohibition on using federal funds for lobbying. The current system -- in place for more than 20 years -- works well and does not need to be changed, according to opponents of the RSC restriction.

A companion bill, S. 190, passed the Senate Banking, Housing and Urban Affairs Committee on July 28 by a party-line vote of 11-9 without an affordable housing provision. Chairman and sponsor Richard Shelby (R-AL) reportedly has "deep concerns" about creating a program that would encourage Fannie Mae and Freddie Mac to grow larger. This could be a major sticking point should the House bill pass with the AHF provision.

EARLY REPORTS OF FEMA REIMBURSEMENT POLICY MISLEADING

Early reports about the U.S. Federal Emergency Management Agency (FEMA) reimbursements to faith-based groups for their hurricane relief services were misleading and lacked essential details. At a press conference last week, FEMA announced that it will reimburse churches and faith-based groups; however, this is simply an extension of its Public Assistance Program that currently provides funding to private nonprofit groups that have provided food, shelter and supplies to victims of Hurricane Katrina at the agency's request. A Sept. 27 *Washington Post* story gave the impression that only faith-based groups would receive such reimbursements, prompting some protest.

In 2002, President Bush ordered FEMA to change its policies so that religious nonprofits could qualify for emergency relief after a natural disaster. However, the new FEMA policy marks the first time the government has made payments to faith-based groups for assisting in a natural disaster. Due to the sheer enormity of the response needed for Hurricane Katrina, state and local governments requested that nonprofit organizations establish shelters for evacuees. This effort required expenditures far in excess of normal operating costs for many organizations.

The policy on what sheltering costs will be reimbursed by FEMA is outlined in a Sept. 9 internal agency memorandum, "Eligible Costs for Emergency Sheltering Declarations." Under the new reimbursement policy, religious groups, like secular nonprofit groups, are reimbursed for allowable costs. They will be required to document their costs and file for reimbursement from state and local emergency management agencies, which will in turn seek funds from FEMA.

The faith community provided valuable and needed immediate assistance in the Gulf Coast. As long as religious indoctrination was not part of the services provided, few have criticized a FEMA policy that would reimburse faith-based for their expenses. However, concerns have been raised over the precedent such policies may set, shifting responsibility for disaster relief, and over religious messages, such as sermons or prayers, potentially bundled with shelter and other emergency services provided by faith groups.

CARE ACT RE-INTRODUCED IN THE SENATE AND HOUSE

On September 27, Sens. Rick Santorum (R-PA) and Joe Lieberman (D-CT) introduced S. 1780, the Charity, Aid, Recovery and Empowerment Act (CARE). The legislation includes charitable giving incentives such as tax-free charitable contributions from Individual Retirement Accounts (IRA), and partial deductions of charitable contributions for taxpayers who do not itemize their tax returns. In an attempt to neutralize the charitable reform package expected to come from the Senate Finance Committee, Santorum also included accountability provisions designed to improve oversight of charities. A companion bill in the House does not include the accountability

provisions.

BODY TEXT S. 1780 is copied from the CARE Act that passed both the House and Senate in the 108th Congress. That bill received significant bipartisan support, but became mired in partisan politics over rules for a House-Senate conference committee, which was never convened. In the 109th Congress, CARE was introduced as Title III of S. 6, a larger welfare reform bill. That larger bill has not moved forward.

Key provisions of S. 1780 include:

- A two-year program allowing non-itemizers to deduct a portion of charitable contributions. (Single filers could deduct contributions over $250 up to a ceiling of $500; these figures are doubled for joint filers.)
- Individual Retirement Account rollover. Donors aged 70 1/2; and over may make direct cash contributions to a charity from a traditional or Roth IRA. Donors aged 59 1/2; and over could rollover amounts for a "life income gift," such as a charitable remainder trust or gift annuity.
- $150 million for the Compassion Capital Fund for capacity building to assist small community and faith-based organizations.
- $1 billion in additional funding for the Social Services Block Grant (SSBG)
- Simplification of lobbying expenditure rules for charities, by eliminating the separate reporting requirement for grassroots and direct lobbying
- Charitable deductions for contributions of food and book inventories; an enhanced deduction for charitable contributions of literary, musical, artistic and scholarly compositions; and
- Mileage reimbursements for charitable volunteers that can be excluded from gross income.

Santorum also included nonprofit accountability measures in the legislation, in order to preempt charitable reform legislation, currently being written by the Senate Finance Committee, and of which he has been increasingly vocal in his criticism. In a Sept. 7 letter sent to various nonprofit organizations, Santorum commented, "[u]nfortunately, there is a current movement in Washington that will change the way charitable and nonprofit organizations operate and that could severely hinder the ability and willingness of average Americans to give."

According to Santorum's letter, the Senate Finance Committee recently issued a staff discussion document outlining a number of charitable reform proposals. While Santorum agrees that the reports of charitable abuses are cause for concern, he proposes that "the government... authorize sufficient resources to facilitate full implementation of existing law" rather than create new reporting and accountability rules. Accordingly, the accountability and oversight measures in the CARE Act are designed to strengthen current enforcement while resisting a "one-size fits all" approach. A summary of these provisions is available on Independent Sector's website.

Earlier this month, certain provisions of the CARE Act were incorporated into Public Law 109-73, the Katrina Emergency Tax Relief Act of 2005. However, the charitable giving provisions of the law are a short-term quick-fix limited in scope and duration, with giving incentives expire at the end of 2005.

Reps. Roy Blunt (R-MO) and Harold Ford (D-TN) have introduced companion legislation, H.R. 3908, the Charitable Giving Act of 2005, in the House. The House bill, however, does not include the accountability provisions.

SOCIAL JUSTICE GRANTMAKING RISES, SHIFTS TOWARD PRAGMATISM

A significant proportion of grantmakers who fund public policy, advocacy, and other social-change activities are increasingly moving away from supporting grassroots advocacy and movement-building. Instead, these funders are choosing more "neutral, technocratic, and results-oriented" approaches to social change, like research, policy

analysis, and outreach to decision-makers.

That's just one conclusion of Social Justice Grantmaking: A Report on Foundation Trends, a new publication by Independent Sector and The Foundation Center. The report is the first comprehensive study to define and measure social justice funding by U.S. foundations. Based on the Foundation Center's grants sample database, the report looks at almost $1.76 billion in 2002 foundation support for social justice activities and compares it with similar support in 1998. The 2002 figure represents more than 13,000 grants and approximately 11 percent of all dollars in the sample.

The report defines social justice grantmaking as "the granting of philanthropic contributions to organizations based in the United States and other countries that work for structural change in order to increase the opportunity of those who are the least well off politically, economically, and socially." This definition, which the authors emphasize is a work in progress, was developed by a high-profile advisory committee and based on work by the National Committee for Responsive Philanthropy.

According to this definition, social justice giving grew by more than half during the period 1998-2002. It did not quite keep up with the growth in overall grantmaking, though, which rose by nearly two-thirds.

The good news is that the number of foundations in the sample making at least one social justice grant grew by more than 9 percent (from 686 to 749). The bad news is that although the number of very large grants increased by more than three-quarters, most social justice grants remained under $50,000.

A handful of funders were responsible for the majority of the support. The top 25 foundations in the sample gave more than two-thirds of all the dollars, and just two grantmakers--the Ford Foundation and the Robert Wood Johnson Foundation--gave nearly a quarter of the total $1.8 billion.

Perhaps the most interesting section of the report is a summary of interviews researchers conducted with 20 major social justice grantmakers. It was these interviews that revealed a majority of social justice grantmakers increasingly rejecting the language and principles of traditional social-justice philanthropy, which they see as weighed down with too much baggage and ineffective in the "increasingly conservative and decentralized political environment of our times." These are the funders opting for more neutral, policy-oriented approaches.

The interviews also illuminated a number of barriers to social justice grantmaking. External obstacles include the current political landscape and a lack of good models for measuring the success of social change efforts. More under grantmakers' control was a perceived incoherence within the field. Among the factors contributing to this lack of cohesion and coordination were funders' divergent objectives; inconsistent and often competing strategies; scattershot capacity-building efforts; short attention spans; and an increasing turnover rate among foundation program officers. Despite a reported rise in formal donor collaboratives, the impact of such efforts is being offset by narrow issue segmentation and by increased insularity among social justice funders.

Other trends emerging from the interviews include a movement towards more pragmatic and programmatic funding (which translates into increased project support and decreased core support), less funding of social justice litigation but more investment in leadership development and communications, and an expanding concentration of support for multi-issue groups that have both policy development and base mobilization capacities.

In order to build social justice philanthropy, interviewees believe the field must clarify its goals, funders must be less timid about saying what they believe in, and grantmakers must reach out to stakeholders in other fields, such as business and academia. Also helpful would be regular convenings within the field to "strengthen infrastructure ties and... provide needed space for new ideas, projects, and relationships."

The report includes numerous other breakouts and analyses, as well as lists of the top funders in each of 14 sub-fields and in-depth profiles of 26 leading social justice foundations. A four-page executive summary can be downloaded for free from the Foundation Center website. The full report can also be purchased online.

EPA MAY BE NEXT FOR POWER TO WAIVE LAW

The push to establish an Imperial Presidency kicked into overdrive when Sen. James Inhofe (R-OK) introduced a bill that would give the Environmental Protection Agency the power to waive or weaken the law for matters related to Hurricane Katrina.

Inhofe introduced the bill on Sept. 15, just one day after Homeland Security Secretary Michael Chertoff announced that he was exercising the power granted by the REAL ID Act to waive all laws in order to expedite construction of border fencing near San Diego.

Inhofe's bill, S. 1711, would give EPA the power to waive or modify a wide range of laws and regulations when the EPA administrator determines that doing so "is necessary to respond, in a timely and effective manner, to a situation or damage relating to Hurricane Katrina." EPA must also determine that the waiver or modification "is in the public interest, taking into account" both the emergency conditions of the aftermath of Hurricane Katrina and the waiver's potential "consequence[s] to public health or the environment."

The extent of the proposed waiver authority is enormous. EPA would be granted the power to waive not only laws and regulations under its jurisdiction but also any law or regulation "that applies to any project or activity carried out" by EPA. If, for example, EPA is supervising cleanup projects that require the use of private trucking companies, EPA could exercise this proposed new power to waive the regulations setting the maximum number of hours that those companies can force their drivers to work. EPA could also apply this power to waive or weaken workplace safety and health regulations intended to protect the workers involved in testing environmental conditions and conducting cleanup efforts. For that matter, it could waive anti-discrimination laws and regulations with which the agency must comply.

The bill would establish a default time limit of 120 days for the duration of any waivers, but EPA would be able to extend the waivers for an additional 18 months.

The bill might even create a shield from accountability for long-term effects of waiver decisions. Section a(2)(C) of the bill adds that "[a]ny effect of a waiver of modification... shall be considered to be in accordance with the requirements of the waiver or modification, regardless of whether the effect occurs during the effective period." If EPA immunizes private contractors from liability during the post-Katrina recovery, this clause could potentially extend that immunity so far into the future that it would even bar cancer cases arising years after workplace exposures to toxins in the Katrina-created wastes.

The bill would also mandate biweekly reporting of EPA's exercise of the waiver power.

Inhofe's bill may not be the only effort in the aftermath of Hurricane Katrina to establish an Imperial Presidency. A bill for Katrina-related relief introduced by Louisiana's senators (S.1766 Section 502) would have allowed private companies to apply for permits that would automatically certify them as in compliance with all federal law and regulation, regardless of their actual compliance or noncompliance. Given the possibility that other Katrina-related bills will give the Bush administration the power to ignore the law, the Natural Resources Defense Council has established an online action center to generate letters to Congress opposing any further waivers.

HOUSE EFFORT TO CREATE SUNSET, RESULTS COMMISSIONS MEETS RESISTANCE

A House hearing on White House proposals to overhaul the federal government was marked by criticism of their "good government" justifications and impassioned arguments about separation of powers.

The Sunset and Results Commissions

The House Government Reform Subcommittee on Federal Workforce and Agency Organization held a hearing Sept. 27 on two bills that advance a White House proposal for fast-track reorganization authority and mandatory program sunsets.

H.R. 3276, the Government Reorganization and Improvement Performance Improvement Act, introduced by Rep. Jon Porter (R-NV), authorizes the president to establish a Results Commission, appointed by the president in consultation with Congress, to review proposals submitted by the president for government reorganization. The Results Commission would be able to amend or add to such a proposal, which would then be fast-tracked through Congress with very limited time for debate and no option for amendments.

H.R. 3277, the Federal Agency Performance Review and Sunset Act, introduced by Rep. Kevin Brady (R-TX), would require agencies to regularly justify their continued existence or be automatically eliminated. The bill establishes a Sunset Commission that will review executive agencies and programs on a ten-year schedule. Congress would then vote to keep or to eliminate the program. As with the results commission bill, this legislation mandates an expedited vote, stymieing deliberation and forcing a "take-it-or-leave-it" vote with no possibility of amendments. H.R. 3277 does make an exemption for regulations that protect the environment, health, safety or civil rights. The exemption, however, applies only to sunsets; key agencies are still vulnerable to being restructured into irrelevance. Further, the exemption addresses only programs related to *enforcement* of regulations; it does not address programs within agencies that conduct needed scientific research or that develop new protective standards.

Norton Condemns Bills as Violating Separation of Powers

The White House proposal embodied in these bills would usurp power from Congress by entrusting unelected commissions with important decisions about the structure and function of all government services, according to Del. Eleanor Holmes Norton (D-DC). Congress already has the power to reorganize government programs when it determines the need to do so. Congress creates the agencies by statute in the first instance, and it revisits their effectiveness and continued existence each year through the budget process as well as through the reauthorization process.

During a fiery question-and-answer period with OMB Deputy Director for Management Clay Johnson, Norton criticized the bills as "a radical assault on separation of powers," because they force an up-or-down vote from Congress and preclude deliberation or compromise.

Norton also noted that the commission would not be free of political influence or bias and would in no way ensure a more efficient, effective government. "I don't think any of us are naÃ¯ve enough to believe," Norton commented, "that the only programs that would somehow find their way off the table would be the inefficient programs."

Experts Disagree on Mechanisms of Government Reform

The committee heard from a range of experts including OMB Watch's Director of Regulatory Policy Robert Shull; Paul Light, professor of public service at New York University; Tom Schatz, president of Citizens Against Government Waste; and, Maurice McTigue, vice president for outreach at the Mercatus Center. The witnesses provided a diverse array of opinions on government reform, from arguing that the White House proposals for

reorganization were too tepid to questioning the parameters of evaluation. While Light endorsed the bills overall, he argued that the best approach is "a much more aggressive, government-wide assessment of the organization of government, rather than starting with programs as our focus." McTigue also endorsed the bills but disagreed with nuances of the approach, asserting that the focus of government reform should not be on government organization or program effectiveness but should rather focus on the capability of each department. McTigue believes the Office of Personnel Management "should shift from thinking about itself as the manager of the federal workforce, and should think about itself in terms of, do we have the capability in each of the government's organizations to be able to do this job effectively?"

OMB Watch's Robert Shull offered a counter to the results and sunset commission proposals, suggesting that government should be evaluated not in corporate terms of efficiency and effectiveness but instead in terms of whether public needs are met. While supporters of the bills decried what they characterized as wasteful redundancy in government spending, Shull argued that seemingly duplicative programs may be necessary to address the needs of marginalized or underserved populations. For instance, Shull noted, "the severely disadvantaged populations of Appalachia have not been enjoying any of the benefits that come from the EPA, from welfare programs, from all the programs that should be addressing their needs. And that's why Congress created the Appalachian Regional Commission, to coordinate resources, to target new resources to serve that population."

Shull also argued that the bills would divert government resources away from their missions towards needlessly justifying their continued relevance. "When it comes to waste," Shull noted, "forcing programs to plead for their lives every 10 years is a waste." Review of government programs is especially wasteful for programs that have an established public need, such as the Occupational Safety and Health Administration or the Department of Education. "There are some needs that are eternal," Shull commented.

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