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LETTER FROM GARY BASS ON POST-KATRINA PROGRESSIVE INITIATIVE

September 19, 2005

RE: Your Thoughts on Launching a Domestic Security Initiative

Dear Friend of OMB Watch:

Like you, the board and staff of OMB Watch has been dismayed, even outraged, by what has transpired in the aftermath of Hurricane Katrina. The limited and poorly coordinated government response is a direct consequence of the "starve the beast" mindset that has dominated our nation's capitol in recent years. The era of less government and unquestioned reliance on the private sector must end. In its place must be a renewed commitment to creating responsive government institutions and policies that address not only the immediate problems in the Gulf Coast, but also the underlying inequities that existed in the region before Hurricane Katrina and that still exist today in far too many areas of our country.

We made this argument in a [September 8 statement](#), your responses to which have been illuminating, gratifying -- and largely supportive. We were taken by not only the number of responses but also the energy, emotion and vitality of them. All these comments were shared with OMB Watch board members and staff, and some, which in particular

added to the understanding of the crisis and what our response has and should be, have been published [here](#) for all to see.

Last Thursday evening President Bush said that "the work of rescue is largely finished; the work of recovery is moving forward." He highlighted the important work of the voluntary sector and then offered a new federal plan to address the rebuilding of the Gulf Coast that some have estimated will cost roughly \$200 billion. The president should be commended for calling on government to respond to the challenge even as "starve the beast" ideologues begin to criticize the spending.

At the same time, the magnitude of proposed spending dictates careful consideration by lawmakers to ensure it is directed toward the right priorities. The public should be concerned with accountability and should demand that taxpayer dollars go toward their intended purpose. It is troubling that the first weekly financial updates required of the administration as part of the money already appropriated by Congress have been called by Rep. David Obey (D-WI) "so vague as to be useless." Others are already warning about contractor profiteering, with Rev. Jesse Jackson, for example, noting that "it's a hurricane for the poor, and a windfall for the rich." One of Congress' key responsibilities in the clean-up and reconstruction to come will be ensuring transparency and accountability, in order to provide assurances to the public that money is being spent wisely and justly.

The president's plan looks like a hasty repackaging of conservative proposals that have been rejected in the past. His proposal for Worker Recovery Accounts of up to \$5,000, the latest incarnation of the White House's routinely rejected proposal for re-employment accounts for dislocated workers, is simply another voucher proposal, embodying the conservative philosophy that favors private corporations over public services, and diminishing accountability. Moreover, the White House's Gulf Opportunity Zone proposal is unlikely to boost new economic activity in the region, as it is merely a rehash of existing empowerment zone policies, which rely heavily on corporate tax breaks to entice businesses into taking on economic activity they would likely do anyway. Finally, the Urban Homesteading Act, which would give land through a lottery to people in exchange for an agreement to build on it, falls far short of being visionary in its approach, does nothing to assuage the enormous anxieties the underprivileged of the region face, and raises moral questions about re-establishing geographic concentrations of the poor. It is even so short-sighted as to provide no means for helping "winners" build housing, only for obtaining property.

The president appears to be taking a page out of the [Heritage Foundation post-Katrina response playbook](#). For example, the Heritage Foundation called on Congress to offset the cost of responding to Hurricane Katrina with cuts to other programs. Bush ruled out tax increases to pay for the new initiatives the day after presenting his plan, and instead called for cuts to offset the new spending. Even House Majority Leader Tom DeLay (R-TX), a staunch conservative, said earlier in the week that discretionary spending has already been cut to the bone and that offsets would be nearly impossible to find.

Not surprisingly, conservative groups such as the Heritage Foundation are trying to capitalize on Katrina to pursue ideological objectives. For example, they have proposed suspending or watering-down a broad swath of environmental, safety, and wage regulations, some of which the president has already temporarily waived. ([See related story.](#))

Possibly the most outrageous proposal of all, however, is the call to repeal the estate tax and "immediately exempt Katrina victims from paying death taxes." Such a statement, which is cruel in its willful ignorance of the reality of Katrina's victims, illustrates just how out of touch this movement is. Had the poor, elderly, and frail who were the vast majority of those who lost their lives in Hurricane Katrina and her aftermath been wealthy enough to face even the slightest prospect of paying the estate tax, they would have likely had the resources to evacuate in time. Those left the most adrift in Katrina's wake are certainly not estate tax payers: they are the single mother struggling to start over from scratch, the senior who lost his home, and working families housed in temporary shelters across our country. In the weeks, month, and even years to come, it is with these people and their hopes for a better future that our priorities should lie. Instead, Time.com [reported](#) last week that Sen. Jeff Sessions (R-AL), a leader for estate tax repeal, left a voice mail for a colleague: "[Arizona Sen.] Jon Kyl and I were talking about the estate tax. If we knew anybody that owned a business that lost life in the storm, that would be something we could push back with."

We hope the president's plan will receive the careful scrutiny it deserves. Democratic leaders have also presented [a plan](#) that deserves consideration. That plan includes helping victims: (1) find housing; (2) find jobs with decent wages, along with increasing and extending unemployment insurance; (3) obtain access to the health care they

need, including mental and public health services; (4) get children back to school and provide student borrowers with relief; and (5) get back on their feet.

The president said last Thursday, "We've also witnessed the kind of desperation no citizen of this great and generous nation should ever have to know -- fellow Americans calling out for food..." We wholeheartedly agree. But we wish to point out that this desperation, which the White House finds so unacceptable, was experienced by many along our Gulf Coast before Hurricane Katrina and is experienced today in underprivileged communities across America. Over the past four years, poverty rates have steadily climbed, with 4.1 million more Americans slipping below the poverty line. We believe something must be done about this; addressing this challenge is both a moral imperative and a practical necessity.

Not only must this nation help heal and rebuild its Gulf Coast communities, it must also work to tackle a still deeper blight. We must invest in communities across the country to prevent avoidable tragedies, mitigate the unavoidable ones, and work to improve the opportunities available to and the quality of life for all Americans. This requires also that our government address existing glaring inequalities in our society. For example, poor and homeless people in the Washington, DC area are already on waiting lists for shelter. They now must wait even longer, because Hurricane Katrina evacuees have been placed above them on those waiting lists. The problem is less the decision to prioritize evacuees than the inadequacy of resources in the capital city of the wealthiest country in the world.

In that vein, OMB Watch and several other like-minded national organizations have begun discussing what a new investment agenda -- tentatively titled the Domestic Security Initiative -- might look like. Here are our initial thoughts. We would like to involve you in this discussion and would appreciate any feedback you may have in helping to shape it.

Five Elements of a Domestic Security Initiative

1. **Addressing our Infrastructure Needs.** This would include repairing and improving our roads, bridges, levees, and public transit systems.
2. **Protecting our Environment.** This would include enacting mandatory limits on pollution to fight global warming and other environmental problems, reducing our dependence on oil, cleaning up existing environmental hazards, and strengthening enforcement.
3. **Investing in our People.** This would include strengthening public education, health care for all, providing child care support, expanding food and nutrition support, providing affordable housing, and protecting the institutions that provide these services.
4. **Strengthening our Economy.** This would include supporting public works projects where needed to put people to work, establishing decent, livable wages, instituting workplace improvements, increasing job training and placement activities, and other employment issues.
5. **Protecting our Communities.** This would include support for community-based policing, enforcement of anti-discrimination, environmental, health and safety, and civil liberty laws intended to protect the public, and federal oversight, testing and coordination of emergency response plans, which include ensuring our chemical plants, nuclear facilities, and borders are safe and secure.

To make it easier to obtain your thoughts, we have created a [short survey](#). Please take a moment to complete the survey.

Thank you in advance for your thoughts. Also please encourage others to complete the survey. We'll leave it open until the end of the month, when we'll report to you on the results.

Yours truly,

A handwritten signature in black ink, appearing to read "Larry", with a stylized, looping flourish at the end.

Click [here](#) to give us your thoughts.

KATRINA COULD CAUSE A NEEDED REEVALUATION OF PRIORITIES IN CONGRESS

Hurricane Katrina has shaken up Congress' fall schedule immensely, as its focus has shifted to respond to the immediate needs of the Gulf region utterly devastated by the storm. Congress has passed more than \$62 billion in aid, as well as [tax and Medicaid packages](#) in order to help victims get back on their feet. This work has caused the postponement of a vote to repeal the estate tax in the Senate and completion of congressional reconciliation tax and spending bills. It is still unclear if this is merely a set-back or the beginning of a more long-term shift in congressional priorities after the hurricane.

Of the reconciliation measures laid out by Congress in April's [budget resolution](#), some could prove to be extremely harmful. Reconciliation was expected to result in lawmakers:

- cutting \$35 billion from expected mandatory spending over five years (\$10 billion was expected to be taken from Medicaid);
- enacting \$70 billion in tax cuts over five years (Senate Finance Committee Chairman Charles Grassley (R-IA) was expected to use reconciliation to, among other things, extend the 2003 dividend and capital gains cuts and provide one year of alternative minimum tax relief); and
- raising the federal government's debt ceiling to \$781 billion (for the [fourth time](#) since President Bush took office in 2000).

The original deadlines for the three actions above were September 16, 23, and 30, respectively. However, in light of the current attention to hurricane-related legislation, Senate Majority Leader Bill Frist (R-TN) has extended the deadlines for the budget cuts approximately six weeks to October 26 and for tax cut legislation to November 2.

The Republican leadership in Congress has signaled its intention to proceed with the reconciliation bills this year, they claim partly to "ensure the vitality" of the national economy. Grassley has repeated his intention to move forward with tax reconciliation and Rep. Jim Nussle (R-IA) and Sen. Judd Gregg (R-NH), Budget Committee Chairmen for the House and Senate, respectively, intend to move forward with reconciliation-protected budget cuts sometime this fall. Nussle stated, "We should not be distracted by this or anything else to continue our efforts to reform government. That's what reconciliation is about, it's about reforming government." Gregg echoed these sentiments calling the idea of an indefinite suspension of reconciliation "blatant politics" and noting, "The view is we're still going to execute this reconciliation package in a timely manner."

Congressional Democrats, meanwhile, have been steadfast in their calling for a fundamental shift in priorities, starting with reversing the decision to complete the reconciliation bills. Democratic lawmakers are calling on the GOP leadership to reconsider drastic tax cuts for the wealthy and cuts to essential human services at a time when so many people are in need. Many believe a post-disaster shift in our national consciousness and priorities will make it much more difficult for the GOP to ram through \$70 billion in tax cuts and hope to cancel reconciliation altogether.

In addition, some Democrats in the Senate are hoping the [delayed vote to repeal the estate tax](#) will fall off the agenda for good. It remains unclear whether Frist will be able to hold a vote on the estate tax this year. While Frist and other GOP leaders are still hoping to hold a vote, they have come under increasing fire -- both from Democrats and some in their own party -- for their efforts to push forward with repealing taxes for the wealthiest people in the U.S., while so many people are in obvious need following Hurricane Katrina.

Sen. Jon Kyl (R-AZ), who has served as the Republican's key estate tax negotiator, told reporters last week he hopes to hold a vote in October "to determine whether or not the votes are there for permanent repeal... That hasn't changed." Meanwhile, Chairman Grassley has vocalized his skepticism on holding a vote, [commenting recently](#) that repeal of the estate tax would be "unseemly" at a time when "people are suffering."

Congressional Republicans not only face criticism of their continued efforts to repeal taxes for the most wealthy, but are also being hammered for a string of budget decisions that will negatively impact the nation's charitable infrastructure for many years to come -- the same infrastructure so many Americans are now turning to for help. Federal budget experts at the [Aspen Institute](#) have found in a recent report that Congress' Fiscal Year 2006 (FY 06) federal budget proposals reflect a broader trend of shifting responsibility for a number of social programs from the federal government towards the already strained charitable sector. In [The Nonprofit Sector and the Federal Budget: Fiscal Year 2006 and Beyond](#), they report that the budget proposed by Congress would cut funding to important programs for nonprofit groups by \$40 billion between FY 05 and FY 10. The president's original budget proposal from earlier in the year would have been even more harmful, cutting these same programs by \$71.5 billion over the same time period.

Congressional GOP leaders and the administration have, following Hurricane Katrina, made a point of lauding charitable organizations and nonprofits for the important role they play in helping people in need. President Bush, in his Sept. 15 [address to the nation](#), said, "I ask the American people to continue donating to the Salvation Army, the Red Cross, other good charities and religious congregations in the region." Yet, Bush and GOP Congressional leaders are undermining the abilities of the charitable sector to effectively provide help in times of crisis, by continuing to push forward with budget cuts, as well as continuing their push for repeal of the estate tax, a [key incentive for charitable giving](#).

If Congress and the White House are serious about providing help to disaster victims *now*, and serious about improving the plight of all Americans in need across the country, it is imperative they reconsider:

- a) Dangerous budget and tax cuts in reconciliation,
- b) Efforts to repeal the estate tax, and
- c) Priorities that would force the nonprofit sector to carry more of the load.

An about-face on these dangerous proposals would illustrate a true commitment to investing over the long-term in the well-being of this country and its people, a commitment that is obviously needed right now.

SENATE, HOUSE PASS FIRST KATRINA TAX CUT PACKAGE

Last Thursday, the House and Senate quickly passed separate but similar versions of legislation designed to provide targeted and temporary tax cuts to all those directly impacted by Hurricane Katrina. The two bills, which also provide tax incentives to individuals housing evacuees and for businesses who continue to pay employees or hire displaced workers, each passed unanimously. All signs indicate this bill is not the last tax cut Congress will attempt to pass in order to help Katrina victims as GOP leaders have already eluded to additional "economic stimulus" proposals in the pipeline. Many fear these proposals will amount to little more than a continuation of the traditional conservative tax cut agenda and will not target tax cuts to those affected by the hurricane genuinely in need.

Most provisions of the two bills passed by Congress last week were targeted at specific populations or groups of people affected by the hurricane and were designed to act as a temporary boost to those left dislocated by the storm. Among the items included in both bills include cancelation of early withdrawal penalties from retirement plans, extension of the Work Opportunity Tax Credit and other provisions that would encourage hiring those displaced by the hurricane around the country and aid in the retention of employees within the disaster zone, a relaxation of restrictions on financing for first-time homebuyers in the areas impacted for three years, and a tax deduction for individuals who provide housing assistance to dislocated people.

The Senate and House versions also seek to encourage [charitable giving through the private sector](#), but the Senate included more wide-ranging incentives. The Senate version encourages both cash and non-cash donations such as food and books, while the House version focuses on increasing individual and business cash contributions only. Both versions increase reimbursements for the charitable use of a personal vehicle and loosen restrictions on direct contributions to charities from IRA and other tax-advantaged retirement accounts.

Before adopting a final version, the Senate bill was modified to more closely match the House version by including additional provisions and modifications related to the Earned Income Tax Credit (EITC), other low-income credits,

and sunsets for different provisions. The EITC provision would grant displaced individuals the option of using their 2004 income to calculate the child credit and the earned income credit on their 2005 tax returns and grant the Treasury Department authority to ensure that taxpayers do not lose dependency exemptions or child credits for 2005 due to being temporarily dislocated. These changes were made in an attempt to have the two versions more closely aligned and avoid the need for a conference committee to resolve differences. Unfortunately, this attempt did not expedite the process enough to send a final version to the President before congress recessed for the weekend.

The Joint Committee on Taxation estimated the House version would cost \$5.28 billion over the next ten years while the Senate version will cost slightly over \$8 billion over the same time period.

Because these tax cut bills contains mostly small, non-controversial items that are targeted and temporary, its two versions will likely quickly be reconciled and a final bill sent to the president this week. It is, however, nearly certain to be only the first of several tax cut packages that will be compiled to respond to the aftermath of the hurricane. It seems likely an intermediate "economic stimulus" package will be proposed that will be more a vehicle for conservative ideological tax policies than a measure to help those in need on the Gulf Coast. Corporate tax cuts, particularly to specific industries like the insurance, logging, airline, and agricultural industries, reconstruction giveaways for huge multi-national corporations like Halliburton, and unrelated items like extension or elimination of capital gains and dividend taxes could sneak their way into legislation that is seen in Congress as must-pass.

What is worse, the devastation and ruin along the Gulf Coast seem to have done little to change the priorities and perspectives of the Republican leadership in Congress. Despite [pushing back reconciliation deadlines](#) until the end of October, GOP leaders continue to insist passing the tax cut reconciliation bill outlined earlier this year is of vital importance. Yet it is this very philosophy of tax cuts as a panacea applicable to any situation that has lead to the current state of egregious underinvestment in American infrastructure and communities, problems Congress now scrambles to fix in the wake of Katrina. Specific provisions long-rumored to be included in the reconciliation bill would primarily benefit the wealthiest Americans, while doing little to offer quick or targeted relief to those who face the formidable work of putting their lives back together in the months to come.

TAKE ACTION NOW: TELL EPA TO COME CLEAN ON HURRICANE KATRINA AFTERMATH

As we survey the events following the storm, our government's early response can only be viewed as woefully inadequate. The government has employed incomplete testing of the dangers, withheld information from the public about chemicals in the flood waters, and provided misleading information about public safety. The public deserves better from the government it relies on as its first line of protection in a crisis.

The fact is that thousands of sites in the storms path use or store hazardous chemicals. From the day Hurricane Katrina passed over the Gulf Coast, report after report from residents and media on the ground told of oil spills, obvious leaks from plants, storage tankers turned on end, and massive fires. Yet our information about what threats to the public actually exist, what measures are being taken to protect the public, and what measures people in the area should be taking to protect themselves remains vague and piecemeal.

Evidencing the confusing information available are statements made by Chris M. Piehler of the Louisiana Department of Environmental Quality, who told reporters earlier this week, "early results do not indicate specific toxic pollutants at any levels of concern," and, in stark contrast, a New Orleans City news release, which stated that "a disease-laden sludge could remain on streets and buildings, which may further compromise public health."

Environmental Protection Agency (EPA) Administrator Stephen Johnson has acknowledged there is great uncertainty over toxic hazards that remain in the flooded parts of New Orleans. Yet, EPA's Response to Katrina webpage offers far too little information to assuage this uncertainty. The agency indicates that only a few chemicals had been found to be over their acceptable limit, which would only pose a threat to children and pregnant women who they drank significant quantities of flood water.

An EPA press release acknowledged the presence of 'fuel oils' in soil deposits left behind from the flood waters, but EPA has not released detailed data about which chemicals have been found in soil. Many 'fuel oils' and other

petroleum byproducts are known carcinogens and can breach certain protective gear, yet the EPA release gives no warning of potential cancer risks of exposure.

In even more flip-flopping by government agencies, over the weekend city officials announced plans to allow some businesses and residents to return to the city as early as next week, while Vice Admiral Thad Allen, head of FEMA's relief effort, called these plans "problematic" and voiced doubts about the safety of return to the city. No one seems to know what potential dangers were left behind from the polluted flood waters. These concerns will require addressing for some time to come, as decisions are made about the safety of institutions, such as schools, day care facilities, or hospitals, where children and other vulnerable populations could face exposure.

Along with many local and national environmental right-to-know organizations, OMB Watch is calling on federal agencies to level with the American people, so that individuals and communities in affected areas can make the best possible choices to protect their own health and safety. You can [take action now](#) and tell EPA to fully investigate the environmental hazards released in New Orleans by Hurricane Katrina and to disclose all its findings to the public.

GAG ORDERS LIFTED; FBI CAN NO LONGER SILENCE DISCUSSION OF PATRIOT ACT, JUDGE SAYS

In a victory for First Amendment advocates, a federal judge lifted a gag order on a Connecticut library from whom the FBI demanded patrons' records, allowing them to discuss openly their experience and participate in the broader debate about the PATRIOT Act. The judge issued a preliminary injunction against the government, barring it from enforcing gag orders on recipients of certain orders called National Security Letters (NSL), created under the PATRIOT Act.

The American Civil Liberties Union (ACLU), who is also a plaintiff in the case, represent "John Doe," an unidentified member of the American Library Association. The ACLU filed the lawsuit on August 9 against the U.S. Department of Justice, and the case was originally under seal in U.S. District Court in Bridgeport, Connecticut.

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 PATRIOT Act. The ACLU sought an emergency court order to lift the gag 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 ordered blocked the release of the client's identity, not his ability to speak about the PATRIOT Act, and that revealing the client's identity could jeopardize a federal investigation into terrorism and spying.

In her September 9 ruling siding with the ACLU, U.S. District Court Judge Janet Hall ruled that the organization has a First Amendment right to fully participate in the discussion surrounding the PATRIOT Act. In order to do so, the recipient must be able to talk about the NSL. Hall wrote, "The [National Security Letter] statute has the practical effect of silencing those who have the most intimate knowledge of the statute's effect and a strong interest in advocating against the federal government's broad investigative powers." Ann Beeson, ACLU Associate Legal Director and the lead attorney in the case, said the ruling "makes clear that the government cannot silence innocent Americans simply by invoking national security." The decision has been stayed, and the gag order will remain, until September 20, to allow the government an opportunity to file an appeal.

The case is likely to be watched closely by critics and supporters of the PATRIOT Act alike. The preliminary injunction, which the government is likely to appeal, is a significant landmark, because it would, if upheld, allow the public for the first time to hear the experiences of someone who has received a National Security Letter. First Amendment and civil liberties activists argue that recipients of PATRIOT Act orders must be allowed to speak out and government should disclose the frequency and circumstances surrounding its use of PATRIOT Act powers, if the country is to have an informed discussion of the usefulness and constitutionality of the PATRIOT Act.

[Sign the ACLU petition](#) to urge Attorney General Alberto Gonzales to stop preventing librarians from participating in the PATRIOT Act debate.

RIGHT-WING GROUPS CHALLENGE LINK BETWEEN CARCINOGENS, CANCER

Two right-wing, industry-backed groups filed a data quality petition with the U.S. Environmental Protection Agency (EPA) challenging the agency's labeling of certain chemicals as "likely human carcinogens." Specifically, the [Washington Legal Foundation \(WLF\)](#) and the [American Council on Health and Science \(ACHS\)](#) want EPA to eliminate statements in its Guidelines for Carcinogen Risk Assessment that indicate that a substance may properly be labeled as "likely to be carcinogenic to humans" based solely or primarily on the results of animal studies.

Background

EPA publishes and periodically revises a series of documents to assist risk assessors in evaluating the risks of environmental hazards; [the Guidelines for Carcinogen Risk Assessment](#) is one such document. The principle focus of the guidelines is hazard identification: can a chemical agent present a carcinogenic hazard to humans, and, if so, under what circumstances? The guidelines direct investigators to weigh all available evidence, briefly summarize the results of the risk analysis, and provide a conclusion with regard to carcinogenic risk to humans. The guidelines include lengthy discussions regarding the use of animal studies in making risk assessments and state that an agent may be labeled "likely to be carcinogenic to humans" based on a variety of evidence derived from animal studies.

The Challengers

The ACSH is a self-described "consumer education consortium concerned with issues related to food, nutrition, chemicals, pharmaceuticals, lifestyle, the environment and health." However, the group has been heavily funded by industry for years; among the past corporate contributors are numerous food, drug and chemical companies. According to the Center for Media & Democracy, the group has taken an "apologetic stance regarding virtually every... health and environmental hazard produced by modern industry."

The WLF was founded in 1977 to "fight activist lawyers, regulators, and intrusive government agencies at the federal and state levels." The group has received sizable donations from the tobacco industry for its work opposing so called "junk science," which it claims has been used to establish the dangers of cigarettes.

Request for Correction

The [August 23 data quality challenge](#) objects to EPA's policy of erring on the side of caution in making its determinations. The Data Quality Act, passed by Congress in 2000, required that agencies establish guidelines to maximize the quality of their data and allow outside stakeholders to request a correction of any information they believe does not meet the guidelines. The WLF and ACSH claim that EPA is distorting scientific evidence with this policy, and they are requesting that a litany of specific corrections be made to the text of the guidelines. Among the "corrections" recommended is a request to replace an assertion that agency policy should be health protective with a statement that "no risk assessment procedures should be as decision-making tools." The petitioners also called for the deletion of an entire paragraph that explains that studies indicating a chemical to be an animal carcinogen may be used to assess a carcinogenic effect in humans, because the agency does not test carcinogens on humans.

The sole evidence used in the data quality petition to challenge EPA's guidelines is a book written by the ACSH, entitled [America's War on Carcinogens: Reassessing the Use of Animals Tests to Predict Human Cancer Risk](#). The book claims that the use of high-dose animal studies to determine human cancer risks is not scientifically sound. It further asserts that animal studies are often misinterpreted in a manner that distorts the risk to humans associated with exposure to such chemicals and that such studies confuse the public regarding cancer risks and actually undermine public health.

The WLF and ACSH petition represents a new low in the misuse of the data quality challenge process, seizing upon the existence of scientific uncertainty and attempting to use the data quality guidelines to call data unreliable or poor. No scientific study or finding is ever certain, and EPA has established policies that it believes are ethical and scientifically sound. Because it does not test carcinogens on human subjects, the agency must make policy decisions based on the best available information -- animal studies.

The challenge does not question the veracity of findings from any specific animal study, merely the use of these studies to assess the risk of cancer in humans. However, the manner in which the agency uses sound scientific information is a policy issue, not a data quality issue. The objections raised by WLF and ACSH in their data quality petition are clearly beyond the scope of the guidelines. This data quality challenge more than any other, is sound reason for re-evaluating its usefulness to agencies but more importantly, its usefulness to the public.

NONPROFITS AND KATRINA

The nonprofit sector has really stepped up to the plate in responding to the crises left in the wake of Hurricane Katrina. Now the federal government is responding with laws and regulations that will assist nonprofits providing relief in the Gulf Coast.

The House and Senate have each passed legislation providing Katrina tax relief that will directly affect nonprofits. The bills, an overall description of which is available [here](#), offer short-term tax relief to evacuees and residents of the devastated areas along with a series of charitable giving tax incentives to promote charitable aid for hurricane victims. The differences between the House and Senate versions, which are very similar, will likely be hashed out early this week, and the bill will immediately be sent to the president for his signature.

Key provisions relating to charitable giving are:

- **IRA Charitable Rollover:** The Senate bill excludes Individual Retirement Account (IRA) withdrawals from a traditional or a Roth IRA for qualified charitable distributions from otherwise-taxable gross income. Taxpayers who are 70 or older would be allowed to rollover amounts from their IRA accounts directly to a qualified charitable organization on a tax-free basis. In addition, the provision allows taxpayers aged 59 or older to transfer IRA funds to a charitable remainder trust and give a remainder interest in the trust to charity without tax consequences. This provision is effective through December 31, 2005. The House bill does not have a similar provision.

Charities may have difficulty maximizing the utility of this tax break, given the short time frame. Groups who can benefit will need to educate the public to make donors aware of it. That means using resources on fundraising rather than relief, given the short timetable for the tax break.

This provision was a key item in the CARE Act, which has had difficulty moving in Congress. Passage through this Katrina Relief package may be the means for extending it next year.

- **Increases Individual Charitable Deductions:** The Senate bill raises the permitted cash contribution level for individuals seeking a charitable deduction from fifty percent to sixty percent of adjusted gross income for tax years ending on or before December 31, 2005. The House bill would exempt cash donations related to Hurricane Katrina relief made before January 1, 2006 from the 50 percent of adjusted gross income limit as well as a phase-out of itemized deductions.
- **Food and Book Donations:** The Senate bill adds a provision from the CARE Act to encourage food and book donations from surplus inventories, by increasing the deductions donors will receive. The tax break would be in effect until December 31, 2005. The House version does not address food and book donations.
- **Corporate Charitable Contributions:** Currently, the charitable deduction for a corporation in any taxable year may not exceed 10 percent of the corporation's taxable income. Both the Senate and House bills temporarily increase the percentage limitation to 15 percent of the corporation's taxable income for one taxable year ending on or before December 31, 2006. Of course, the history of corporation charitable contributions shows that corporations, on average, have never come close to the 10 percent limit on contributions.
- **Encourage IRS Information-sharing with State Charity Officials:** The Senate allows the IRS to disclose information regarding organizations for which the IRS has denied or revoked tax-exempt status or certain other disciplinary actions the IRS may have taken to appropriate state officials. The objective is to address potential scams in the wake of Katrina, although there is no specific expiration date for this provision. The House does not have a similar provision.
- **Increased Mileage Rate for Calculating Charitable Contribution Mileage Deduction:** Both the Senate and House versions increase the mileage rate individuals may use to compute a tax deduction for personal vehicle expenses. The Senate increases it to 60 percent of the standard business mileage rate; the House to 70 percent [until Dec 31].

In related legislation, the House passed by voice vote [H.R. 3736, the Katrina Volunteer Protection Act](#), authored by Rep. James Sensenbrenner (R-WI). The bill provides liability protection for the actions of unaffiliated volunteers or

those working through a nonprofit assisting in Hurricane Katrina relief. Currently, there are few legal protections for volunteers or nonprofit organizations. Only an extremely small percentage of the some 1.4 million nonprofit organizations in the United States actually purchase liability insurance, due to excessive costs.

As the *Los Angeles Times* recently reported, "The lack of liability protection was one of several concerns delaying some 900 churches from joining the evacuation network." According to recent press accounts, the Red Cross feels constrained in giving out the names of refugees to those who want to offer their homes for shelter because of liability concerns.

The IRS has also temporarily changed some of its regulations concerning nonprofits. For example, it is expediting reviews of applications from new disaster relief organizations seeking tax-exempt status. The IRS has also recently announced special relief intended to support [leave-based donation programs](#). Under these programs, employees donate their vacation, sick or personal leave in exchange for employer cash payments made to nonprofits providing relief for victims of Hurricane Katrina. This provision expires on Dec. 31, 2005.

Other agencies are also taking action. The Department of Justice (DOJ) has established the Hurricane Katrina Fraud Task Force, designed to deter, investigate and prosecute disaster-related federal crimes, such as charity fraud and insurance fraud. DOJ has also set up a page on its website to inform citizens of [ways to protect themselves from fraud](#).

Donations to nonprofits have poured in as Americans respond to the devastation in the Gulf Coast. As of September 17, charities have raised over \$1.06 billion in aid. Consequently, many nonprofits that are not participating in the relief efforts are worried whether donations for the remainder of the year will decline. According to the *Chronicle of Philanthropy*, such dips occurred after the 2001 terrorist attacks and December tsunamis.

Charities and foundations are currently scrambling to figure out how to aid the victims of Hurricane Katrina, helping them get new homes, jobs, transportation, health care, education for their children, post-trauma counseling, and other services. Charities will also be focused on the long-term, how the work their organization does can help prevent massive devastation like that caused by Hurricane Katrina. The charitable giving legislation is Congress' first step in aiding charities in getting the resources they need when Congress and the nation is asking so much of them. However, Congress must do more than rely on the nonprofit sector. Disaster preparedness and relief programs are a federal responsibility that must be supported with adequate resources.

OMB WATCH URGES CHARITIES TO COMMENT ON PROPOSED FEC RULE

The ability of nonprofits to use broadcast media for advocacy and to encourage citizen participation in public policy debates could be severely limited by proposed rules meant to regulate federal campaign finance. The Federal Election Commission (FEC) is reviewing rules that exempt unpaid broadcasts and 501(c)(3) organizations from a provision meant to limit campaign attack ads funded with soft money. The review is the result of a court case challenging a host of regulations implementing the Bipartisan Campaign Act of 2002 (BCRA). Charities and religious organizations are encouraged to file comments explaining why grassroots lobbying and genuine issue advocacy should not be regulated as federal election activity.

BCRA imposed absolute bans on corporate funding, including nonprofit corporations, for broadcast messages that refer to federal candidates with 60 days of an election or 30 days of a primary. Congress gave the FEC power to create exemptions for broadcasts that are wholly unrelated to federal elections. In 2002 the FEC exempted charitable and religious organizations from the rule because, unlike other nonprofits such as 527s, these organizations are already prohibited from partisan election activity by the U.S. tax code.

A federal court sent the rule back to the FEC for reconsideration to address whether it should leave enforcement to the Internal Revenue Service (IRS), and asking if this would result in exempt advertisements that "promote, support, attack and oppose" a federal candidate. On August 12 the FEC published a notice seeking public comment on its re-examination of the rule. The FEC is considering a range of options including retaining, narrowing or repealing the exemption for 501(c)(3) organizations or replacing it with a broad new exemption covering all communications that do not "promote, support, attack, or oppose" a federal candidate.

The FEC, however, fails to define what it means by the "promote, support, attack, or oppose" standard. An undefined "promote, support, attack, or oppose" standard would be the wrong approach to determine when charities and religious organizations can broadcast grassroots lobbying and other messages about the issues of the day. It does not distinguish between 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, with charities wishing to avoid FEC investigations, even if they are ultimately cleared. The public would be the ultimate loser if this happens.

While drawing the line between electioneering and issue advocacy may be difficult, it is not impossible. Lobbying is not campaigning. The IRS has established indicators that distinguish between electioneering and issue advocacy. For example, nonpartisan communications are those that:

- identify specific legislation or a specific event outside the control of the organization;
- are timed to coincide with the specific event; and
- identify the candidate solely as a government official in a position to act on the policy or specific event.

The FEC should use IRS standards in its own enforcement program, so that there will be one set of standards for charities and religious organizations to define what is partisan and what is not. The FEC should recognize that nonpartisan nonprofits have the right to speak out on the issues of the day, any day. The right to criticize federal officeholders in television, radio, satellite and cable media should not depend on arbitrary application of the undefined "promote, attack, support or oppose" standard, or on the desire of federal officials to avoid public criticism. If the FEC is unable or unwilling to define the "promote, attack, support or oppose" standard, it should retain the exemption for 501(c)(3) organizations. It can always initiate its own enforcement proceedings, and use the IRS rules as a guide.

Although it lost its appeal of the court's ruling before a three-judge panel, the FEC has asked the U. S. Court of Appeals for the District of Columbia to allow review by the entire eleven-judge panel. A majority of the judges must approve the request. On Sept. 2 the court ordered attorneys for Reps. Chris Shays (R-CT) and Martin Meehan (D-MA), plaintiffs in the suit, to file a response to the FEC's request by September 17.

GAG ORDERS LIFTED; JUDGE TELLS FBI IT CAN NO LONGER SILENCE DISCUSSION OF PATRIOT ACT

In a victory for First Amendment advocates, a federal judge lifted a gag order on a Connecticut library from whom the FBI demanded patrons' records, allowing them to discuss openly their experience and participate in the broader debate about the PATRIOT Act. The judge issued a preliminary injunction against the government, barring it from enforcing gag orders on recipients of certain orders called National Security Letters (NSL), created under the PATRIOT Act.

The American Civil Liberties Union (ACLU), who is also a plaintiff in the case, represent "John Doe," an unidentified member of the American Library Association. The ACLU filed the lawsuit on August 9 against the U.S. Department of Justice, and the case was originally under seal in U.S. District Court in Bridgeport, Connecticut.

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 PATRIOT Act. The ACLU sought an emergency court order to lift the gag 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 ordered blocked the release of the client's identity, not his ability to speak about the PATRIOT Act, and that revealing the client's identity could jeopardize a federal investigation into terrorism and spying.

In her September 9 ruling siding with the ACLU, U.S. District Court Judge Janet Hall ruled that the organization has a First Amendment right to fully participate in the discussion surrounding the PATRIOT Act. In order to do so, the recipient must be able to talk about the NSL. Hall wrote, "The [National Security Letter] statute has the practical effect of silencing those who have the most intimate knowledge of the statute's effect and a strong interest

in advocating against the federal government's broad investigative powers." Ann Beeson, ACLU Associate Legal Director and the lead attorney in the case, said the ruling "makes clear that the government cannot silence innocent Americans simply by invoking national security." The decision has been stayed, and the gag order will remain, until September 20, to allow the government an opportunity to file an appeal.

The case is likely to be watched closely by critics and supporters of the PATRIOT Act alike. The preliminary injunction, which the government is likely to appeal, is a significant landmark, because it would, if upheld, allow the public for the first time to hear the experiences of someone who has received a National Security Letter. First Amendment and civil liberties activists argue that recipients of PATRIOT Act orders must be allowed to speak out and government should disclose the frequency and circumstances surrounding its use of PATRIOT Act powers, if the country is to have an informed discussion of the usefulness and constitutionality of the PATRIOT Act.

[Sign the ACLU petition](#) to urge Attorney General Alberto Gonzales to stop preventing librarians from participating in the PATRIOT Act debate.

JUSTICE DEPARTMENT DOCUMENTS ILLUSTRATE NEED FOR MORE LOBBYING DISCLOSURE ENFORCEMENT

The U.S. Department of Justice (DOJ) recently released compliance information for the first time in the 10-year history of the Lobbying Disclosure Act (LDA). The information reveals that it has pursued only 13 violations out of approximately 200 referrals in the past two years. Recent [legislation](#) introduced by Reps. Marty Meehan (D-MA) and Rahm Emanuel (D-IL) in the House and Sen. Russ Feingold (D-WI) in the Senate calls for lobbyists to file quarterly lobbying statements and would require disclosure and regulation of grass-roots activity. There is some question whether reform is needed, especially in light of the lack of disclosure and enforcement from the DOJ.

Of the 13 cases pursued by the Justice Department, seven are "still open" reported Channing Phillips, a [U.S. Attorney for the District of Columbia](#) spokesperson. The six completed cases include three, in which the office declined to act and three others that resulted in civil settlements and fines. Until this new report, the DOJ had refused to release information, citing Privacy Act restrictions.

Two of the three settlements involved small firms, Natsource LLC and CHG & Associates. The third involved an unnamed lobbyist, whose name was withheld in compliance with the Privacy Act. The settlements with the firms were reached earlier this year. Natsource was fined \$25,000 for failing to file reports in 2003, while CHG was fined \$12,000 for failing to file in 2000.

The LDA requires federal lobbyists that meet a set threshold to report their activities to the Clerk of the House and Senate's Offices in the form of semi-annual reports. Neither the Senate nor House Clerk's Office has formal enforcement authority. The office of the U.S. Attorney for the District of Columbia receives referrals from the Secretary of the Senate and Clerk of the House of Representative's Office. The U.S. Attorney's Office then makes a determination to pursue the "most egregious" cases. Penalties are imposed on a person who "knowingly fails to (1) remedy a defective filing within 60 days after notice of such a defect by the [Senate Secretary or House Clerk's Office] or (2) comply with any other provision of the Act".

It is not clear from the information released by the DOJ why the firms involved in the settlements were penalized and how they made the determination. According to Phillips, the U.S. Attorney's Office has "culled through" about 200 referrals of possible LDA violators over the past two years and decided to pursue 13 cases. He did not provide information on what factors led to the 13 being chosen.

The recently released documents provide a window into the world of LDA enforcement. In a Roll Call article, Pam Gavin, superintendent of the [Senate Office of Public Records](#), which oversees the LDA in the Secretary's Office, stated, "From my perspective, I think it's working pretty well. Anybody in the world can go to our Web site and look at lobbying reports and see what's being done." So far this year, the Senate has received 25,500 lobbying disclosure documents.

However, details about enforcement activities can be difficult to come by. The LDA is mute on the issue of disclosure of violations to the public. Gavin's office has never made public the number of LDA-related referrals it

has made to the U.S. attorney's office, much less any details about individual cases. Consequently, it is difficult to find out how well the current law is working, and if there is adequate enforcement.

According to Kenneth Gross, an attorney with Skadden, Arps, Slate, Meagher and Flom, and author of *The Ethics Handbook on Entertaining and Lobbying Public Officials*, while "people do not play fast and loose with the rules, after 10 years, there is some lack of understanding of what gets included in a report." Additionally, he explained that "[w]hen errors surface, they tend to be inadvertent. As soon as a company corrects an error, it has absolved itself from a violation. You really have to work at getting referred under this law."

WHITE HOUSE FINDS IN KATRINA RECOVERY 'OPPORTUNITY' TO WAIVE NEEDED PROTECTIONS

Though most government agencies have worked diligently to alleviate the untold burdens on Hurricane Katrina's victims and to expedite recovery in a safe and effective manner, several agencies have taken the opportunity to waive needed protections, thus possibly putting recovery workers and others at greater risk.

From the Department of Education to the Federal Aviation Administration, federal agencies are developing strategic responses to the catastrophic aftermath of Hurricane Katrina. Agencies are providing housing, food and medical services to the victims of the hurricane. And some agencies, such as the Department of Transportation, are also waiving rules to make it easier for needed supplies to be carried to the area or to address other problems.

In a few select cases, however, important public protections have been waived in response to the catastrophe. These waivers may undermine relief efforts by putting recovery workers and others at risk.

Questionable Waivers

Federal Motor Carrier Safety Administration (FMCSA) Regulations

In the weeks after Hurricane Katrina ravaged the Gulf Coast, [two declarations of emergency and one other White House emergency-related proclamation](#) have weakened rules for truckers and motor carriers, effectively [waiving most FMCSA safety regulations](#) in order to respond to the "emergency" situations, however loosely defined. The result in all three cases is the waiver of qualifications for drivers, safety requirements for carrier parts and accessories, hours of service requirements for drivers, inspection, repair and maintenance standards for vehicles, requirements for the transportation of hazardous materials, as well as employee safety and health standards.

- The regional declaration of emergency issued by FMCSA, which went into effect Aug. 31, waives safety regulations for the "emergency transportation of gasoline, diesel, jet fuel, natural gas/CNG, propane and ethanol." The original declaration of regional emergency expired on Sept. 15; however, FMCSA has extended the waiver of safety regulations through Oct. 5 for transportation to, from, and within the states in the eastern (CT, DC, DE, MD, MA, NH, ME, NJ, NY, RI, VT, PA, VA, WV) and southern (AL, AR, FL, GA, KY, LA, MS, NM, NC, OK, SC, TN, TX) regions of the country.
- The White House's declaration of emergency for the states of Alabama, Arkansas, Florida, Louisiana, Mississippi, and Texas resulted in a waiver of safety regulations for truckers delivering "direct emergency relief *to, from, or within*" those states, "*regardless of commodity carried*." This waiver went into effect Aug. 29.
- The White House's authorization of emergency relief in support of evacuees in Arizona, Colorado, Georgia, North Carolina, Oregon, Tennessee, Utah, Virginia, and West Virginia automatically triggered the waiver of safety regulations for the "emergency movement *to, from, or within* those States of items needed to house, feed, or clothe evacuees."

The waivers are quite broad, despite not affecting the requirements for commercial drivers licenses or state regulations of vehicle weight. For example, FMCSA will allow drivers to assist the Gulf Coast efforts who are not otherwise qualified to drive, and trucks delivering fuel in most parts of the country will not have to meet standard levels of maintenance and service. Further, the declaration waives the [hours of service](#) regulations, which limit the number of consecutive hours a truck driver can work without taking a break. Under FMCSA regulations that operate during declarations of emergency, a driver must receive ten hours of off-duty rest if he or she requests it,

but companies do not otherwise have to comply with hours-of-service regulations. Though a temporary waiver may have been necessary to help evacuate the area or to provide immediate assistance, now that the areas hit by the storm have been fully evacuated, waiving these important regulations puts truck drivers as well as others on the road needlessly at risk.

Minimum Wage for Government Contractors

Just as Katrina's aftermath shone the national spotlight on the vast poverty and inequity in the Gulf region, the White House responded, ironically, by repealing a 70-year-old minimum wage standard. Claiming a need to lower the cost of reconstruction, the White House announced Sept. 8 that it is [suspending](#) its obligations under the Davis-Bacon Act to require a fair minimum wage for contractors working on the reconstruction and recovery efforts in the aftermath of Hurricane Katrina in Alabama, Florida, Louisiana and Mississippi.

The Davis-Bacon Act prohibits the federal government from undercutting prevailing wages in the construction industry in areas where the federal government is contracting for work. The administration is required to ensure that its contracts establish minimum wages for workers that comport with the prevailing wage of the area. The White House invoked the act's exemption for national emergencies.

Secrecy News, a publication of the Federation of American Scientists, noted that a [Congressional Research Service report](#) indicates Bush's waiver of Davis-Bacon may be illegal. The National Emergencies Act of 1976 renders several statutory authorities dormant, unless specific procedural formalities are enacted by the president. Since the president did not formally declare a national emergency in accordance with that act, the Davis-Bacon waiver may be illegal.

The president's action came one day after 35 Republican members of Congress led by Reps. Jeff Flake (R-AZ), Tom Feeney (R-FL) and Marilyn Musgrave (R-CO) [requested Bush to temporarily suspend the Davis-Bacon Act](#) for the Hurricane Katrina recovery effort.

Companies such as Halliburton's Kellogg Brown & Root that are given federal contracts to rebuild in the Gulf region are under no obligation to pass the savings from reduced labor costs onto taxpayers. There is nothing to prevent these contractors from cutting workers' wages and boosting their own profits, while passing no savings onto taxpayers. The Center for American Progress noted that prevailing wages in the Gulf Coast are not likely to make people rich. "A laborer in New Orleans would receive \$10.40 per hour in wages and fringe benefits," according to the Center.

Representatives in Congress who oppose Bush's waiver have already moved to undo it legislatively. Rep. George Miller has introduced a bill, H.R. 3763, that will require the re-application of Davis-Bacon wage requirements to the areas affect by Hurricane Katrina. The Campaign for America's Future has launched a [letter-writing campaign](#) to support the Miller legislation.

Environmental Standards: Fuel and Hazardous Materials

With the waters in and around New Orleans teeming with hazards such as lead and hexavalent chromium and the airs carrying the remnants of dangerous leaks of natural gas and carbon monoxide, the Environmental Protection Agency has chosen to waive fuel refinement and emissions standards, thus adding to the health hazards already present. Whatever merit there may have been in temporary waivers to mitigate the overtaxed fuel supply, both the duration of these waivers and EPA's apparent willingness to extend them point to a potentially hazardous trend.

In the name of ensuring "that the Hurricane Katrina natural disaster does not result in serious fuel supply interruptions around the country," the agency [announced](#) waivers of various fuel standards in a number of markets. The [agency's website](#) lists a rash of recent waivers for fuel requirements, including waivers for low sulfur highway diesel fuel requirements, for the use of reformulated gasoline in Richmond, VA, and for the use of low volatility "summertime" gasoline, as well as relaxed requirements for "refiners, importers, distributors, carriers and retail outlets to supply gasoline and diesel fuels that do not meet standards for emissions."

Though most of the waivers of fuel standards were originally set to expire Sept. 15, EPA extended them in several cases. The waiver of requirements for low sulfur gasoline, for instance, was extended until Oct. 5 in Tennessee and

[Petroleum Administration for Defense Districts \(PADD\) I and III](#), which includes eastern states from Maine to Florida and the Gulf states. Extensions were granted to the waiver of standards for low Reid Vapor Pressure (RVP), which sets the volatility for gasoline, in Texas, California, and Phoenix, AZ.

[The Natural Resources Defense Council](#) argues that waivers are not an appropriate long-term response to fuel shortages. As NRDC vehicles policy director Roland Hwang stated in a press release, NRDC does not oppose interim waivers but adds that it is "important to recognize that [waivers] will cause harmful health effects from increased air pollution. It cannot be a permanent rollback."

At the same time, the Pipeline and Hazardous Materials Safety Administration issued temporary emergency exemptions for Florida, Alabama, Louisiana, and Mississippi, authorizing them to waive all safety regulations for the transportation of hazardous materials to, from and within the disaster areas when necessary to support the recovery and relief efforts. The exemption does not include transport of radioactive materials.

A Sign of Things to Come?

These cases may be less important as individual policy decisions than as portents of a broader agenda of regulatory rollbacks. The Heritage Foundation, a conservative think tank, has unveiled a [vast plan](#) for using the reconstruction of the Gulf Coast as an excuse for broad rollbacks of federal protections, including environmental, worker health and safety, and minimum wage standards.

The president's recent speech announcing the White House's plan for reconstruction of the region included reference to a "Gulf Coast Opportunity Zone." Though Bush gave little detail of what such an opportunity zone would entail, the Heritage Foundation report using the same language details a vast give-away to corporate special interests and a full-scale repeal of health and safety protections. Ideas put forward in the report include drilling in the Arctic National Wildlife Refuge, suspending environmental regulations such as the Clean Air Act and Clean Water Act, and waiving the prevailing wage standards in Davis-Bacon. The Heritage Foundation recommended a limited government response to rebuilding the Gulf Coast while cutting the so-called "red tape" of health and safety regulations. Senate environment committee chair James Inhofe (R-OK) has already taken some of the report's message to heart, [dropping](#) a bill Sept. 15 that would allow EPA to waive all environmental protections in the name of expediting the Gulf Coast recovery.

Heritage Foundation scholars and other conservative thinkers see the devastated Gulf Coast as an "Opportunity Zone" for entrepreneurs "in which capital gains tax on investments is eliminated and regulations eliminated or simplified." The report calls for the suspension of any regulations that may "impede" recovery. Judging by Bush's ready acceptance of the report's "Opportunity Zone" language, it seems likely that other threats to public health and safety, civil rights, and environmental protections are soon to come.

HOMELAND SECURITY WAIVES LAW FOR BORDER FENCE CONSTRUCTION

Apparently taking advantage of media focus on Hurricane Katrina and its aftermath, the Department of Homeland Security (DHS) announced that it is exercising its newly acquired power to waive apparently all law in order to expedite construction of border fencing near San Diego.

The DHS statement announcing the decision to exercise the waiver authority does not specify what laws are being waived. The statement, issued Sep. 14, emphasizes the elimination of environmental law protections, among them the National Environmental Policy Act and the Coastal Zone Management Act, but it does not otherwise catalog the specific laws waived. Moreover, DHS does not eliminate the possibility that non-environmental protections -- such as Davis-Bacon Act requirements for federal contractors to hire construction workers at the area's prevailing wage, or Occupational Safety and Health Act requirements for job safety -- have also been waived.

An attachment to the statement emphasizes the environmental protections that DHS has decided to implement in the absence of all the protections Congress has carefully developed over the last 30 years.

The statement does limit the scope of the waiver decision to expedite construction of border fencing along a 14-mile stretch near San Diego. It is unclear, however, if DHS is waiving any protections outside that geographical zone for activities related to the fence construction, such as waiving requirements for maximum hours of service for truck drivers delivering equipment or supplies to the border zone.

The Secretary of Homeland Security was given this unprecedented power to waive all law by [the REAL ID Act](#), the Sensenbrenner immigration bill that was [forced through Congress](#) as a rider on the Iraq war supplemental.

Any legal challenge to DHS's decision will be complicated by a related section of the law, which purports to strip courts of any jurisdiction over "any cause or claim arising from any action taken, or any decision made, by the Secretary of Homeland Security pursuant to" the power to waive all law.

TAKE ACTION: [Tell Congress to demand DHS to come clean about what laws are being ignored!](#)

ANALYSTS SPLIT ON MEANING OF MERCURY VOTE

Commentators disagree whether a recent vote on a Senate measure to reject part of the Bush administration's mercury rule should be viewed as a sign of strength or weakness for progressives in environmental fights to come.

The vote in question was on [S. J. Res. 20](#), a joint resolution under the [Congressional Review Act](#) to reject part of the Environmental Protection Agency's [mercury rule](#).

Even if the resolution had passed the Senate, it would almost surely have been rejected by the House, and it would have surely been vetoed had both chambers passed it. In fact, the only time the Congressional Review Act was successfully used was to reject the Clinton administration's ergonomic rules, which both a GOP-dominated Congress and the incoming Bush administration wanted to stop.

Facing both stiff opposition in the House and the threat of a [White House veto](#), the resolution of disapproval was rejected by the Senate on a [47-51 vote](#).

National Journal's CongressDaily reported that supporters of the resolution viewed the vote as a signal of their ability to marshal the 41 votes needed to sustain a filibuster against the administration's proposed [Clear Skies legislation](#). From this perspective, the 47 votes in favor of the resolution amount to a success.

Others consider the vote a failure, both as a thwarted strategy against the mercury rule and as a weakening in the environmental ranks. According to [BushGreenWatch](#), the vote was a "severe setback" to environmental health particularly notable because six Democrats voted against the resolution. Nine Republicans, however, did vote for the resolution -- including Susan Collins (R-ME), co-sponsor of the measure.