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Update: Super-Waiver is the Wrong Tool for the Job

Since being introduced as part of the TANF reauthorization bills [earlier this month](#), the President's "super-waiver" provision has undergone several significant revisions. The original provisions included in Rep. Wally Herger's (R-CA) [H.R. 4090](#), and Rep. Buck McKeon's (R-CA) [H.R. 4092](#), TANF bills allowed for governors to request a waiver of any statute or rule applied to any program in the Departments of Labor, HHS, and Education. All that would be required of the governor was a proposal showing how the waiver was neutral in cost. The Secretary of the petitioned department would have 90 days to sign off on the proposal, and if the state received no response within 90 days, the proposal could be deemed approved.

During the subcommittee-level debate, the scope of these bills was somewhat narrowed and the versions of the bills passed last week provided for fewer eligible programs and included a collection of vaguely-worded restrictions on the type of federal laws eligible for waiver. The subcommittee-passed bills look like this:

Super-Waiver Provisions Passed in House Subcommittees

TANF Reauthorization Bill and Sponsor	House Subcommittee	Eligible Programs
H.R. 4090 , Rep. Wally Herger (R-CA)	Ways and Means	Unemployment Insurance TANF Child Support Social Services Block Grant (SSBG)
H.R. 4092 , Rep. Buck McKeon (R-CA)	Education and the Workforce Subcommittee on 21 st Century Competitiveness	Child Care and Development Block Grant (CCDBG) Wagner-Peyser (Employment Services public employment offices, a part of the "One-Stop" workforce development services delivery system) Job Opportunities for Low-Income Individuals (JOLI) Adult-Education and Family Literacy Act

The two bills have identical language regarding restrictions on the waivers. The bills prohibit the waiving of Section 241(a) of the Adult Education and Family Literacy Act and "any provision of law relating to civil rights; purposes of goals of any program; maintenance of effort requirements; health or safety; labor standards under the Fair Labor Standards Act of 1938; or environmental protection."

Though the number of programs eligible for these super-waivers has been reduced and the above list of restrictions added, OMB Watch remains concerned about this provision. Our primary concerns include: (For a full list, see the [April 15 Watcher article](#).)

- **Transfer of funds:** Super-waivers may expose the communities these federal programs are intended to serve to cuts in already-tight funding, with no input and limited oversight by Congress. These waivers could allow a state to redirect funding that was appropriated for low-income job training, for example, to road repair.
- **Waiving of federal eligibility standards:** Though many of these eligible programs are established as block grants

with few federal definitions and restrictions, those federal standards that do exist work to ensure that a certain baseline is met by service providers to all participants, regardless of the state program they are enrolled in.

- **Manipulation of Program Goals:** In addition to limiting funding and eligibility, super-waivers may also allow for a change in program focus to accomplish limited ideologically-motivated agendas on the state level, that would never secure sufficient Congressional support on the national level.
- **Vague Restrictions:** Though both versions of the super-waiver legislation enumerate a variety of categories of federal regulations not eligible for waivers, the list refers to only two specific statutes, and thus leaves open to debate just which federal laws would be included. For example, the legislation mentions that federal laws relating to "civil rights" are not eligible for waivers. Without enumerating the specific federal civil rights statutes, however, it is not possible to be certain whether the Americans with Disabilities Act, for example, would also be protected from state waivers.

On top of these concerns comes the possibility that additional programs and/or entire departments may be added as these two bills are consolidated, with little time for the full debate and investigation that a development of such far-reaching powers warrants.

OMB Watch does not object to state flexibility and believes that states should have the ability to mold a federal program to meet state-specific needs and conditions, but this "super-waiver" is the wrong tool for this job. If states require more flexibility for a specific program, the changes should be made in the authorizing legislation of that program. Overly-broad language that creates more uncertainty and vulnerability is the wrong approach.

We Cannot Make Estate Tax Repeal Permanent

Estate tax repeal proponents, unwilling to postpone their agenda to eliminate the country's most progressive tax, even in the face of an ever-increasing number of costly national priorities and an estimated \$100 billion deficit for this fiscal year (see [related story](#), [this issue](#)), have continued to push for permanent repeal at every opportunity.

The latest vehicle tapped for this controversial measure was the Senate's energy bill, which was itself already embroiled in a heated 5-week long debate. To avoid further delay to the energy bill the extraneous tax legislation would have created, Senate Majority Leader Tom Daschle (D-SD) secured a deal with Minority Leader Trent Lott (R-MS) by which the Senate's most ardent and active repeal voices (Sens. Jon Kyl (R-AZ) and Phil Gramm (R-TX)) agreed to withdraw their repeal amendment from the energy bill in return for Daschle's agreeing to allow a separate vote on repeal later this Spring.

Likelihood of Passage

Senate rules require 60 votes to make repeal permanent, and many observers had assumed that the repeal advocates were still many votes shy of this magic number. In a "Sense of the Senate" vote on last month's farm bill, however, the Senate showed its nominal support for permanent repeal in a [56-42 so-called "message vote."](#) This vote made it clear that repeal advocates were much closer to the 60 votes they need to make repeal permanent. (The two members not voting, Sens. Robert Bennett (R-UT) and Pete Domenici (R-NM) are strong opponents of the estate tax and would likely vote to make repeal permanent.) Unlike the Sense of the Senate vote, which has no legislative force, this upcoming vote will move permanent repeal quickly along the legislative process, as the Senate will be using a House-passed bill calling for permanent repeal. This means that the bill could go straight on to the President, who has urged the Senate to pass permanent repeal legislation and would surely sign the bill with great fanfare.

Many observers have noted that Lott, Gramm, Kyl and other outspoken repeal proponents are hoping that November's close mid-term elections will pressure a few more Senators to vote for making full repeal permanent in this upcoming vote. Foremost among the reasons put forth by Kyl and Gramm in their floor speeches on the matter are the owners of small farms and family businesses liable for the tax and the promise of a powerful economic boost offered by making repeal permanent. An upcoming May 22 Capitol Hill rally and lobbying campaign led by repeal advocates will likely be carrying a similar message.

The facts do not support either of these arguments: IRS statistics show that fewer than 2% of the nation's family farms and small businesses pay this tax as it is currently structured – the number of farms and businesses will likely drop further as the exemption increases over the next 10 years. In all, only 48,000 of the wealthiest estates pay any estate tax in any given year. Nevertheless, the federal government receives, on average, \$33 billion each year from the tax, and state governments receive an additional \$6 billion each year. A [recent Joint Committee on Taxation \(JCT\) report](#) shows that repeal would cost nearly \$100 billion over 10 years, and more than \$55 billion in the first year of full repeal.

To these purely financial costs, however, must be added the opportunity costs of not investing this money in the many needs of localities, states, and the country as a whole. While the country continues to reedy its first responders at home and wage war abroad, it must also contend with the aging of its population and its infrastructure. Around the country, people continue to ask that these needs -- health care for all, affordable prescription drugs for its seniors, education for its young, and job training and child care to help its families transition with the economy -- be placed above tax cuts of any sort. With so many pressing concerns, we hope that the small, but vocal group of repeal advocates will put the country's well-being above that of their estates. At the very least, they should allow for a reform that would ensure small farms and small businesses were protected while allowing the estate tax to continue in its long tradition of redirecting a portion of the wealth held by the top 2% of the country to the security and development of the country as a whole.

Nonprofits to Preserve the Estate Tax, a coalition of nonprofits from around the country that opposed permanent repeal during last year's tax cut debate, is reemerging to counter this latest effort to eliminate the estate tax. The coalition will continue to oppose permanent repeal on the grounds that repeal:

- Is fiscally irresponsible
- Violates our nation's sense of fairness

- Will have a powerful negative impact on states
- Will hurt charities

To read more about the estate tax preservation efforts of OMB Watch and the Nonprofits to Preserve the Estate Tax, see [OMB Watch's Estate Tax Page](#). If you would like to receive updates on this work, or take part in it, please email estatetax@ombwatch.org and include your name, organization, phone number and fax number.

The Deficit is Growing! The Deficit is Growing!

The Congressional Budget Office (CBO) has issued its latest report on the FY 2002 budget deficit, which is now expected to reach up to \$100 billion.

In introducing the President's FY 2003 budget request, Office of Management and Budget Director Mitch Daniels had warned that this year would be awash in tough spending choices, and CBO's recent projections provides even stronger ammunition for those who aim to "bring fiscal discipline" to the federal budget at the expense of a whole host of small, but important federal programs. But is trading a handful of relatively small federal programs for a handful of other small programs really the solution to our projected \$100 billion budget deficit woes? (To help orient yourself in the world of federal budget numbers, consider this: the two loan programs mentioned here comprise approximately 5% of the Department of Education's annual budget of \$50 billion; by comparison, repealing the estate tax for one year would cost \$55 billion and the cost of providing the Home Mortgage deduction to home owners comes to \$100 billion each year.)

In ordinary budget crunches, such tough choices would certainly be necessary, but we are not in an ordinary budget deficit. Again, for purposes of orientation, it may be useful to note that this projected \$100 billion deficit is only 1% of GDP. In previous deficit years, the size of the deficit relative to GDP was much higher:

Previous Budget Deficits as a Percent of GDP

Year	Percent of GDP
1982	4.0
1983	6.0
1984	4.8
1985	5.1
1986	5.0
1987	3.2
1988	3.1
1989	2.8
1990	3.9
1991	4.5
1992	4.7
1993	3.9

And approximately 40% of this year's deficit is due to last year's slowdown of the economy, which most economists are predicting is now on its way to a full recovery. In the meantime, the prevailing school of economic thought urges deficit spending under these slowed economic conditions. (Indeed, in [its most recent economic report](#), the Bureau of Economic Analysis (BEA) attributed 1.4 percentage points of its estimated 5.8-point annual rate of growth in GDP to the recent increases in government spending.)

The other factor that distinguishes this year's deficit from previous deficits is the substantial role last year's \$1.35 trillion tax cut plays in it. Another 40% of this year's deficit is due to last year's massive tax cut – and the size of the tax cut's contribution to the budget shortfall increases over the next 10 years. A [recent Center on Budget and Policy Priorities \(CBPP\) analysis](#) shows that freezing the tax cuts at their current level would free up \$500 billion for the federal government over the next 10 years, rendering such "tough choices" far less necessary.

Supplemental vs. The Budget Deficit

The House Appropriations Committee will not be marking up the President's FY 2002 \$27.1 billion supplemental spending request, as scheduled for tomorrow – and, in fact, the delay on the supplemental seems to be indefinite at this point, according to many sources.

Apparently the hold-up on the supplemental, which mostly provides extra funding for defense and homeland security spending, arose when House members made it clear they planned to make additional requests to the President's \$27 billion request. Among these, according to a report by the Washington trade publication [BNA](#), was \$650 million for election reform, requested by House Speaker Dennis Hastert (R-IL). The House leadership is concerned that the supplemental will be the starting pistol for a race to tack on numerous spending requests that will further enlarge the projected \$100 billion deficit for FY 2002 (see [related story](#), [this issue](#)).

In the Senate, similar concerns over spending priorities and recognition of the fact that there will be little chance to reconcile a House budget resolution with a Senate budget resolution have led to an indefinite postponement of a crafting of a Senate budget resolution (see [this April 1, 2002 Watcher article](#)).

Religious Electioneering Bill Loses Sponsors

As [reported previously](#) in the Watcher, Rep. Walter Jones (R-NC) has introduced a bill ([H.R. 2357](#)) that would allow religious congregations to support or oppose candidates for office without losing their tax exemption or ability to receive deductible contributions, as long as election related efforts do not amount to a substantial portion of their overall activities. Currently, 501(c)(3) charities are banned from participating in partisan electioneering. This would act as a huge loophole to recent campaign finance reforms as well as allow for tax-deductible political contributions.

Although the bill currently has over 110 co-sponsors, two co-sponsors of the legislation, Reps. Steve Largent (R-OK) and Joe Scarborough (R-FL) have recently resigned from the bill. A third, Rep. James Traficant (D-OH) has recently been convicted of several felony bribery charges and cannot vote on any legislation due to House rules. The bill has been referred to the Ways and Means Committee and may be addressed before the end of this session. This bill comes as the IRS exempt organization compliance division has picked partisan political contributions by charities as one of its main areas of focus for education and enforcement efforts this year.

OMB Watch Comments on Electronic Filing of Form 990

With more and more individuals filing their taxes electronically, it should come as no surprise that the IRS is looking to expand e-filing to other venues. The comment period has just closed on the IRS Form 990 e-filing proposal, and they report receiving many positive comments on the proposal.

OMB Watch's [comments](#) focused on public use of Form 990 data, citing the 15,000 daily visitors that access [GuideStar](#) to find financial data on charities, often as a precursor to making donations. Data on GuideStar consists of scanned 990 forms, and as such is not searchable. Electronic submission of data would allow for a much more powerful database of information taken from Form 990. The comments also point out that electronic submission would simplify the reporting process for nonprofits, especially because many states accept Form 990 for state reporting requirements. Electronic filing would also make the job of regulators easier.

[Comments](#) from Independent Sector also strongly encouraged the IRS to implement e-filing, citing the increased ease of filing for nonprofits, and cautioned that electronic filing must indeed be made easier than paper filing. The Urban Institute also filed comments that stressed the importance of e-filing for those who conduct research on the nonprofit sector.

Independent Sector and the Council on Foundations are providing leadership for a group of organizations working on this issue. The activity of the group is called the Electronic Data Initiative for Nonprofits (EDIN). Contact [Independent Sector's](#) Pat Read at 202/467-6100 for more information.

Online Voting and Voter Education, Revisited

In the US and elsewhere, an effort is being made to capitalize on improvements in online security and assistive technologies to use online voting to make voting more accessible, increase overall voter participation, and specifically, turnout among younger voters. The question is whether public confidence will support any changes in voting procedures before technology can be seen as a means to improving voter turnout.

In February 2002, the Council for Excellence in Government released **a study** by Hart-Teeter called "E-Government: To Connect, Protect, and Serve Us" The study was based on two telephone surveys, one of 961 American adults (including an oversample of 155 Internet users), the other of 400 government decision-makers (200 federal, 100 state, and 100 local level). Among other findings, one set of figures stands out: overall support for online voting for federal elections, including congressional and presidential races, managed to drop from 38% in August 2000 to 33% in November 2001. On the flip side, opposition to online voting in federal elections rose from 59% in August 2000 to 61% in November 2001-- with some 51% strongly opposed to the idea.

What is the source of the drop in interest? Some likely culprits include concern over the integrity and security of potential online voting systems, individual voter privacy in the wake of some well-publicized security breaches involving inadvertent federal and state government disclosure of information online, and confusion that arose from the real-world voting process that bred confusion in the infamous November 2000 presidential elections.

Even more interestingly, 60% of Internet users surveyed were opposed to online voting in federal races as well. Only 16% of both the public and all Internet users surveyed thought that allowing voters to learn about the records and positions of candidates for public office was the most important way "e-government" could help make government more accountable to the public. But, curiously, of users with Internet access at home or work (if not both), 44% said they would be likely to access online information about candidate voting records, versus 20% who said they were not likely to do so.

All of this might suggest that online technology does not yet (if ever) stand a chance for being accepted as means of voting for elected office, but might enjoy a growing level of interest and trust for educating voters as to who's running and the policy issues involved in the races, right? Well, maybe...

Consider that by February 2001, a number of online efforts to provide better access to information for voters had fizzled during the dot-com shakeout, most notably Voter.com. This site provided access to political news and issues from journalists and advocacy groups across the political spectrum, customized to individual user tastes, and also allowed users to compare their views to that of candidates for elected office, and receive updates on ballot results.

As discussed in a **February 29, 2000 NPTalk**, Grassroots.com had acquired the **Democracy Network** (DNet), a joint effort of the League of Women Voters Education Fund (LWVEF) and the Center for Government Studies (CGS). LWV is a nonpartisan political organization that, since 1920, has worked to encourage active citizen participation in public policy through voter education activity. LWVEF, since its start in 1957, increases understanding of major public policy issues through voter guides, candidate forums, town meetings, and community and leader debates. CGS, a nonpartisan organization, designs and helps implement innovative approaches to improve the process of media and governance, and also works in substantive areas of campaign finance, ballot initiatives, digital divide, higher education, health care and state and local finance.

DemocracyNet (DNet) was launched by CGS in 1996, using creative interactive web technology to spark online candidate debates and improve the quality and quantity of voter information-- in essence, allowing the user to become the online "moderator" of candidate debates by selecting the candidates and issues of interest. DNet also provided in-depth coverage of hundreds of campaigns including Presidential and congressional races, state-level elections, local office contests, and ballot initiatives via a searchable online database of text and multimedia content. It was, in short, a strong nonprofit effort aimed at increasing voter understanding of important public policy problems, allowing candidates to debate their positions in an "electronic town hall" before an online audience, and fostering greater civic participation and interaction between voters and candidates.

Addressing concerns about the credibility and integrity of nonprofit involvement with a for-profit entity, Grassroots gave both LWVEF and CGS seats on its board, the founder and former president of CGS was made chairman of Grassroots.com, and Grassroots.com pledged to make unrestricted cash contributions to LWVEF and CGS to further their educational missions. In turn, Grassroots.com was to utilize the 1,100 local LWV chapters to collect candidate statements and information, to offer online candidate debates, voter-candidate interactions and electoral information accessible by zip code, in an attempt at the time to cover some 120,000 elections from the Presidential races down to local school-board contests.

But, after only one year under its wings, Grassroots.com and the League of Women Voters **reached a mutual agreement** to release DNet back under the auspices of the League, albeit without the leadership of its founder and the corporate support it had previously enjoyed. Grassroots.com had expanded the capacity of the service to make it available in some 7,000 federal, state, and local elections for 17,000 candidates during the year 2000, while LWV provided much needed outreach to facilitate candidate participation in, and citizen access to, information and online debates.

To be sure, it was not a venture that had an easy time attracting foundation support when it was a nonprofit effort originally, at the very least given the technical support logistics involved. Outside of corporate support for the overall operations, the significant funder base supports the effort through the individual state LWV chapters, and not the DNet service directly.

So if the public isn't willing to accept online voting, per se, while interest in access to some form of data on candidates for public office is strong -- depending upon the source and means for accessing it-- but the commercial and foundation marketplace have not responded with a huge flow of money to support such efforts, what does that say?

Two things come to mind. First, there will always be a potential nonprofit opportunity to provide access to this information-- no matter how local or specialized-- as long as the public is interested in voting-related information that commercial entities and government itself treat as a low priority (due either to low potential for revenue or limited resources).

One good example of this comes from the California Voter Foundation, which has archived a **database of all campaign promises** offered up by candidates for California elected office races during the year 2000. The archive contains campaign statements, agendas, issue positions, and platforms from the major party candidates for the 15 congressional and 16 state legislative office in California's 2000 general election around issues devoted to affordable housing, clean air and water, jobs and the economy, neighborhoods, parks and open space, schools and education, and traffic and transportation. The value of such nonprofit knowledge bases is that the public has the means to hold candidates accountable in an environment where campaign websites are frequently updated and edited, and the potential for such information being "revised" or "lost" is high.

Second, that sometimes there is just as much, if not more, effort needed to not so much educate the public, but remind it of what it claims it wants and expects in an increasingly online world. Investments in information access and more participatory civic frameworks online do not come cheap and without experimentation, but they don't succeed without actual public participation either.

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[Archive of Campaign Promises](#)

California Voter Foundation

Administration Moves to Clear Way for Dumping, Mountaintop Mining

The Bush administration is moving forward with a new rule that would allow mining companies to dump dirt and rock waste into rivers and streams, potentially clearing the way for new "mountaintop mining" -- a controversial practice that involves the removal of mountaintops to access lucrative low-sulfur coal, [according to the Washington Post](#), and other sources.

EPA officials have benignly described this rule -- which still must be submitted, and then approved, by OMB's Office of Information and Regulatory Affairs (OIRA) -- as a simple effort to harmonize differing definitions of "fill material" between EPA and the Army Corps of Engineers, which shares responsibility with EPA for granting dumping permits under the Clean Water Act. Yet environmental groups -- while acknowledging the need for harmonization -- charge that the rule would substantially weaken clean water protections in the process.

In particular, it would eliminate the "waste exclusion," and institute an "effects-based test" for deciding whether material can be dumped in waterways -- an approach strongly backed by mining interests. This removes a chief barrier to mountaintop mining, which generates large amounts of dirt and rock waste, and grants new discretion to the Army Corps of Engineers in deciding whether to allow dumping.

In a March 25 letter ([page 1](#), [page 2](#)) to President Bush, eight Republican members of the House took issue with this decision, writing, "While any effort to grant the Army Corps of Engineers the authority to issue permits for this destructive practice is indefensible enough, it is equally alarming that this proposal would reach even further, opening waters across the United States to being filled and destroyed by many types of waste, including other kinds of mining wastes."

Besides rock and dirt, the new rule amazingly opens the door for the disposal of trash in waterways as well. According to BNA, a Washington trade publication, the rule notes that "materials generally considered to be garbage or trash, such as recycled porcelain bathroom fixtures like toilets, sinks, or even junk cars, can be cleaned and placed in waters of the U.S. to create environmentally beneficial artificial reefs."

As stated above, this proposal must receive the approval of OIRA before it can take effect, although this may be a foregone conclusion. OIRA Administrator John Graham has often been criticized for having a knee-jerk reaction against any regulatory restrictions, and is likely to be sympathetic to this sort of roll back. Nonetheless, Graham maintains that his mind is open, that he has a long history of supporting regulation where it is needed. Yet to this point, Graham's OIRA has rejected 20 agency regulatory proposals, many for cost reasons; in no case has he rejected a rule for being insufficiently protective. If Graham's mind is as open as he says it is, this might be a good place to start.

Supreme Court Rules Against Expansion of 'Takings' Claims

In a major victory for the environment, the Supreme Court ruled in a 6-3 decision that governments are not required by the Constitution to pay compensation to landowners in cases where development is temporarily prohibited, as reported in the April 23 [Washington Post](#).

"Land-use regulations are ubiquitous and most of them impact property values in some tangential way -- often in completely unanticipated ways," Justice John Paul Stevens [wrote in rejecting the plaintiffs' argument](#) that government freezes on development amount to "takings" of private property, which under the Fifth Amendment requires just compensation. "Treating them all as . . . takings would transform government regulation into a luxury few governments could afford."

The case grew out of a dispute between hundreds of people who bought land around Lake Tahoe during the 1970s and the Tahoe Regional Planning Agency (TRPA), which sought to postpone building on the land while it planned for likely runoff from development that could damage the pristine lake. In 1981, TRPA ordered the first of two moratoriums on development, and after becoming entangled in litigation, the moratorium has never been lifted.

Property-rights advocates hoped to use this case to further press their broad interpretation of the Constitution's takings amendment; recently, the Supreme Court has ruled that certain land-use regulations may constitute a takings, requiring just compensation. Yet the plaintiffs argument that any moratorium on development, regardless of duration, required compensation went much further than the Court was willing to go.

Chief Justice William Rehnquist, Antonin Scalia, and Clarence Thomas dissented in the decision.

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