

2006

## Offering Hope to Post-Katrina Communities

Amee Patel

Follow this and additional works at: <http://lawcommons.luc.edu/pilr>

 Part of the [Disaster Law Commons](#), [Health Law and Policy Commons](#), and the [Housing Law Commons](#)

---

### Recommended Citation

Amee Patel, *Offering Hope to Post-Katrina Communities*, 11 Pub. Interest L. Rptr. 14 (2006).  
Available at: <http://lawcommons.luc.edu/pilr/vol11/iss1/10>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized administrator of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

# Offering Hope to Post-Katrina Communities

By Ameer Patel

Months after Hurricane Katrina ripped apart thousands of communities in Louisiana, Mississippi and Alabama, the question of whether the victims are getting the help they need remains unresolved.<sup>1</sup> Despite the opinions of whether post-hurricane policies and other types of aid are meeting the victims' needs, the disaster relief efforts have worked toward improving the education, housing and health issues they face.<sup>2</sup> The federal and state governments have passed legislation on everything from housing issues to tax incentives, while national and local non-profits have focused on similar issues through service delivery.<sup>3</sup>

## Federal and State Policy

### Education

On December 20, 2005, President Bush signed into law the Hurricane Education Recovery Act ("HERA") after Hurricane Katrina displaced 372,000 students and damaged or destroyed approximately 700 schools.<sup>4</sup> HERA is "one of the most comprehensive plans because it provides emergency grants for the school year tailored to the needs and particular circumstances of students displaced by Hurricane Katrina," said Chad Colby, the Public Affairs Representative for the U.S. Department of Education.<sup>5</sup> Specifically, the \$1.6 billion relief package provides assistance in several ways.

First, \$750 million was allocated for immediate restart aid to public and private schools for startup costs related to reopening and re-enrolling students.<sup>6</sup> Destroyed schools in Louisiana, Mississippi and Alabama that were operating in accordance with state law prior to August 22, 2005 and are located in areas

specifically designated as disaster zones are eligible for this type of aid.<sup>7</sup> These funds will remain under the control of a public agency, state or local, that also retains title to the materials, equipment, etc. acquired with the funds.<sup>8</sup> Funds will be allocated according to a formula that takes into account the number of students enrolled during the 2004-2005 school year, the extent of the damage to eligible schools and the needs of the school.<sup>9</sup> The law requires that private schools share equitably in this distribution.<sup>10</sup>

Additionally, \$200 million was appropriated to higher education institutions, but this amount was divided between Louisiana and Mississippi.<sup>11</sup> Each state then apportioned the funds according to a set formula.<sup>12</sup> For instance, the Louisiana Board of Regents distributed the \$95 million based on factors, such as tuition and enrollment.<sup>13</sup> \$75 million was equally distributed into three funds: enrollment, lost



Almost a year later, federal and state governments continue to address a multitude of economic and social problems.

tuition revenue and financial aid budgets.<sup>14</sup> The University of New Orleans, for example, had approximately 25 percent of the total full-time students at the institutions receiving aid, so the university obtained approximately 25 percent of the \$25 million from the enrollment pot.<sup>15</sup> On the other hand, Dillard University, which sustained the worst physical damage,

received \$4.8 million based on a 2,000 student population.<sup>16</sup> Since Congress stipulated that the money could be used for student aid, faculty salaries or any other purpose authorized by HERA, Dillard University is in the process of crafting a plan that will use these monies effectively.<sup>17</sup> The remaining funds from the allocated \$95 million will be used for

(**Katrina Response**, *continued on page 15*)

## FEATURES

(Katrina Response, continued from page 14)

scholarships and incentives in the form of extra pay for medical students to do their residencies in New Orleans and given to nontraditional institutions such as New Orleans Baptist Theological Seminary.<sup>18</sup>

Furthermore, \$645 million was provided to assist displaced students. Under the law governing these funds, the displaced student's local school district must set up, at the parent's request, an account to receive the designated aid to assist with the education of the student.<sup>19</sup> The aid, not to exceed \$6,000 per student, is conditioned upon the school tuition, fees and allowances for reasonable travel costs.<sup>20</sup> Those eligible are students who are attending a public or private school other than the one in which they were enrolled prior to the hurricane.<sup>21</sup> However, the states may establish criteria, including income guidelines, for further determining student eligibility.<sup>22</sup>

Finally, \$5 million was provided to help assist homeless youth. Hurricane Katrina has rendered more than 1 million persons homeless, including well over 200,000 school age children (over 135,000 in Louisiana alone).<sup>23</sup> The purpose of the program is to provide financial assistance to local educational agencies ("LEAs") serving homeless children and youth displaced by Hurricane Katrina or Hurricane Rita to address the educational and related needs of these students consistent with section 723 of the McKinney-Vento Homeless Assistance Act ("McKinney-Vento Act").<sup>24</sup> The McKinney-Vento Act requires that all school districts make special accommodations to ensure access to school for children whose families are "homeless."<sup>25</sup> "Homeless" includes not only the classical notions of living in a tent or car, but also families that lack a regular abode (e.g. live in a refugee type settlement, or placed in a motel/hotel by the Federal Emergency Management Agency ("FEMA") or other agency) or who are temporarily doubled up with another family.<sup>26</sup> A homeless child must be promptly enrolled, provided full access to classes, be afforded transportation if needed and cannot be discriminated against, or placed in a segregated school, based on their status.<sup>27</sup>

Some displaced families from areas other than New Orleans may end up in locations not very far from their original residence, but outside the boundary

of their local school.<sup>28</sup> The McKinney-Vento Act expressly provides such children the option to attend their local school, assuming it is still operating.<sup>29</sup> State education agencies ("SEA's") have the responsibility to ensure compliance by local school districts, and each state has designated a coordinator of homeless education of children and youth.<sup>30</sup> For example, the Mississippi Department of Education has released a procedural booklet for emergency enrollment procedures serving those students who fit the definition of "homeless." The procedures require that schools immediately enroll students in homeless situations, even if they do not have required documents, such as school records, medical records, proof of residency or other documents.<sup>31</sup> Furthermore, the procedures call on the districts to educate the displaced students as part of a school's regular academic program and integrate these students with the non-displaced counterparts in all programs and activities.<sup>32</sup>

### Housing

Through its FEMA arm, the Department of Homeland Security ("DHS") and the Department of Housing and Urban Development ("HUD") has been involved in a series of measures to accelerate the delivery of federal assistance and provide transitional housing for victims of Hurricane Katrina.<sup>33</sup>

Evacuees who are eligible for FEMA's Individual and Household Programs ("IHP") will receive a three month rent payment in the amount of \$2,358.<sup>34</sup> This amount reflects the average fair market rent rate for a two-bedroom unit nationwide.<sup>35</sup> This amount can be applied to transitional housing costs for any location that the evacuee chose.<sup>36</sup>

"We are offering residents more than just a roof over their head," said HUD Secretary Alphonso Jackson in a statement to the press.<sup>37</sup> "This is an opportunity for thousands of the victims of Hurricane Katrina to get back on their feet as they pick up the pieces and start anew," he added.<sup>38</sup>

For evacuees who were not eligible for IHP assistance, HUD created the Katrina Disaster Housing Assistance Program.<sup>39</sup> Through this program, relocation specialists would be on hand to assist individuals and families in locating a rental unit based

(Katrina Response, continued on page 16)

(**Katrina Response**, *continued from page 15*)

on the needs of the family.<sup>40</sup> Eligible individuals and households could contact local housing authorities nationwide to participate in this program.<sup>41</sup> Participants would receive housing assistance that could be redeemed for housing units in any community at the discretion of the participant.<sup>42</sup>

The most comprehensive congressional reconstruction plan for Louisiana was recently introduced.<sup>43</sup> The Louisiana Recovery Corporation Act or more commonly known as the Baker Bill, is sponsored by the Congressman Richard Baker (R-La.) and is supported by Senators Mary L. Landrieu (D-La.) and David Vitter (R-La.).<sup>44</sup> This bill proposes to create the Louisiana Recovery Corporation Act ("LRC"), which would be a new federal bureau that would secure and redevelop hurricane areas by providing financial stability to landowners and their lenders.<sup>45</sup> Additionally, the Act would attempt to balance interests of homeowners, developers and lenders while simultaneously establishing great regulatory oversight by spending up to \$80 billion to pay off real estate lenders and homeowners.<sup>46</sup> The LRC bureau would accomplish this by selling bonds to pay property owners up to 60 percent of the equity in their real estate before the storm and clean up large tracts of the city.<sup>47</sup> Ultimately, LRC would eventually sell the land back to developers.<sup>48</sup>

Critics like Donald Powell, Gulf Coast Recovery Chairman, disagree with the long-term potential of the LRC.<sup>49</sup> They fear that in a single stroke, the Baker plan would make the U.S. government the largest property owner/real estate agent in New Orleans.<sup>50</sup> By paying out at pre-Katrina values, the federal government would also deter private investors from going in and buying up properties and thus creating a new market floor.<sup>51</sup> Further, critics say that the price tag for the Baker plan is also preposterously high.<sup>52</sup> Data from the Federal Office on Gulf Coast Rebuilding indicate that of the 200,000 houses destroyed by the flooding, only half are owner-occupied homes and 60,000 of the remaining homes already have insurance.<sup>53</sup> This means there are only 36,000 uninsured homeowners who truly need aid.<sup>54</sup>

The White House shared the critical sentiment of the Baker Bill when it came out against the proposal.<sup>55</sup> Donald Powell, President Bush's choice

to oversee the Gulf Coast's recovery from Hurricanes Katrina and Rita, said the administration prefers the specifically defined financing of the grant program to an open-ended proposal by Baker to set up a governmental agency to buy flood-damaged homes and pay off the mortgages for possible resale and redevelopment.<sup>56</sup> He asserts that the \$6.2 million Community Development Block Grant given to the Gulf areas is enough to cover the critical housing needs.<sup>57</sup> Powell went on to say that the administration is encouraging the state to focus on a much smaller subset of flood-damaged homes: about 20,000 outside the flood plain whose owners lacked flood insurance.<sup>58</sup> The administration thinks these are the most pressing cases because these owners have no insurance to pay for repairs from unexpected flooding.<sup>59</sup> Still, Baker plans on pushing the bill by giving Congress and the administration more control over finances.<sup>60</sup>

### Health

After Katrina, many evacuees were left without jobs, relocated to other states and regions, and left without health insurance unless they met the guidelines

---

**[Critics] fear that in a single stroke, the Baker plan would make the U.S. Government the largest property owner/real estate agent in Louisiana.**

---

for Medicaid enrollment in other states.<sup>61</sup> Responding to the health insurance crisis, Senators Grassley (R-Iowa) and Baucus (D-Mont.) authored the Emergency Health Care Relief Act to extend Medicaid coverage for five months to low-income childless adults from areas affected by Katrina, and to authorize the federal government to pay all Medicaid expenses.<sup>62</sup> The bill also would create a fund to help survivors pay the premiums to continue their job-based health insurance.<sup>63</sup> The Congressional Budget Office estimates that this bill will cost \$8.9 billion between 2006 and 2010.<sup>64</sup>

The lofty price-tag and the fact that several of the evacuees do not fit Medicaid's traditional eligibility

(**Katrina Response**, *continued on page 26*)

## FEATURES

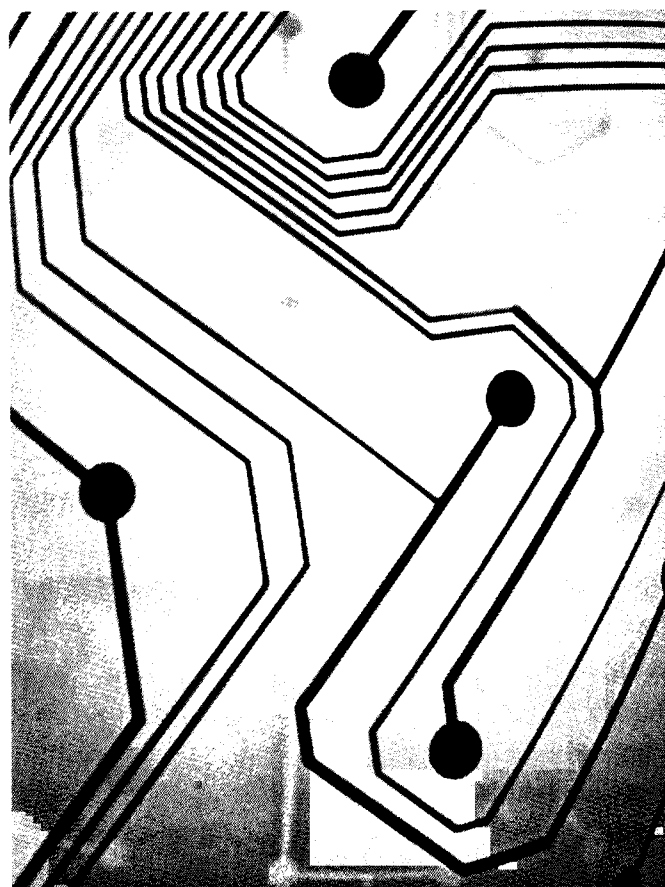
# Can Your Privacy be Protected in an Internet Age?

By Suzanne Blaz

In addition to the recently discovered secret wiretapping of American citizens' phones by the U.S. Government,<sup>1</sup> recent advances in Internet and copy protection technology are raising new security and privacy concerns for consumers. Two instances of particular import demonstrate that U.S. Internet and computer privacy may be at risk in the future: Sony BMG Music Entertainment's attempt to protect the copyright of its music by installing a digital-rights-management program onto compact discs, which automatically install onto personal computers without the owner's knowledge;<sup>2</sup> and Google's new desktop software that is designed to help users move and search their computer files, but allows access to this information by Google<sup>3</sup> and perhaps the U.S. government, although the government's recent subpoena for Google's Internet searches was denied.<sup>4</sup>

In the area of cyberlaw, privacy and copyright issues are always of concern;<sup>5</sup> however, the law is not always able to keep up with the technology and can lead to Americans' private information and computers being accessed by others without any recourse.<sup>6</sup> Indeed, as Michael Hiltzik of the *L.A. Times* noted regarding the government's wiretapping, "[i]t's plain that the necessary ingredients for a surveillance program on such a scale are the will and the technology. The law no longer matters, because technology has left it in the dust."<sup>7</sup>

Indeed, many users did not and still do not know that Sony BMG was routinely installing a hidden software program, known as the Extended Copy Protection ("XCP"), on their CDs.<sup>8</sup> This software is essentially a rootkit,<sup>9</sup> a relatively new term that describes a file or folder that is invisible to the user, is hidden from spy-ware or virus searches, degrades the computer's performance and can control critical computer functions, allowing others access to a person's computer. Moreover, it has been deemed "spyware" by Microsoft.<sup>10</sup> This software was exposed when Sony BMG released a utility program to help users remove the rootkit component of the XCP from their computers;<sup>11</sup> however, this program did not effectively remove the rootkit software, but only



Recent threats to privacy have come from anti-piracy software, internet search engines, and file transfer applications.

unmasked the hidden files created by the XCP, and effectively disabled the consumers' computer CD player from being able to play all CDs.<sup>12</sup>

Furthermore, the XCP anti-piracy software not only masked its presence, but also introduced a vulnerability that hackers and virus writers began to target, which forced Sony to recall millions of its CDs.<sup>13</sup> The XCP software gave not only Sony BMG, but also hackers, a "back door" to access a user's computer, because the rootkit that it installs, a security tool that can capture computer passwords so that one can access your computer remotely, collects information from a user's personal computer and allows others access to it without the user ever being aware of this access.<sup>14</sup>

Sony BMG issued two public apologies and recalled the CDs, stating, "[w]e deeply regret any

(Tech Privacy, continued on page 18)

(Tech Privacy, continued from page 17)

inconvenience this may cause our customers.”<sup>15</sup> Steps that Sony has taken to make reparations include a proposed settlement that will pay consumers \$7.50 per CD that had the XCP software or allow them three free downloads of whole albums online.<sup>16</sup> Additionally, Sony has stated that it is committed to providing software to help remove the rootkit;<sup>17</sup> however, the program available on its web site to remove the software is not entirely effective.<sup>18</sup>

This incident has not only tarnished Sony’s image, but also brought government attention. On February 16, 2006, after speaking with BMG executives, the director of law enforcement at the Department of Homeland Security (“DHS”), Jonathan Frenkel, issued a statement that the DHS may consider outlawing rootkits, stating that, “[the government] need[s] to be thinking about how we ensure that consumers are not surprised by what their software programs do.”<sup>19</sup>

In addition to threats from the DHS, Sony BMG faces several lawsuits<sup>20</sup> as a result of the XCP software, one of which was brought by the Electronic Frontier Foundation (“EFF”), a non-profit group that pledges to protect consumers’ digital rights.<sup>21</sup> These lawsuits allege, among other things, that Sony BMG violated the federal Computer Fraud and Abuse Act<sup>22</sup> and the federal Electronic Communications Privacy Act<sup>23</sup> in addition to common law invasion of property, trespass to chattels and violation of State fraud acts.<sup>24</sup>

Despite the adverse publicity from the Sony BMG incident, the entertainment industry continues to experiment with rootkits and other programs to try and protect their copyright. For instance, some copies of the movie *Mr. & Mrs. Smith* were released with rootkit programs,<sup>25</sup> and Symantec also developed rootkits to protect its copyright on the Norton Anti-virus program it owns.<sup>26</sup>

There are laws that help companies who wish to protect their copyrighted material from being dispersed to the masses over the internet, such as the Digital Millennium Copyright Act (“DMCA”)<sup>27</sup> passed in 1998; however, this law is becoming more controversial and may come under attack in situations where the consumer is harmed. For instance, while the DMCA makes it illegal for users to circumvent

digital protection software, it does not address situations where it may be necessary for someone to bypass harmful software, such as the rootkits on the Sony CDS, or in order for consumers to make fair use of the material they bought on different media that they own.<sup>28</sup>

Another security threat that looms over Americans is Google’s new desktop program, which lets users automatically transfer information from one personal computer to another and allow them to search their desktop files; however, the user must allow Google to store the material for up to 30 days.<sup>29</sup> This service is available for free, but worries over this service have arisen because of the U.S. government’s recent demands for searches made by users of Google’s search engine and other information.<sup>30</sup>

Google recently fought the U.S. Justice Department over its subpoena for internet searches, which the government wanted in order to compile data in response to a Supreme Court case<sup>31</sup> that cast doubt on the constitutionality and effectiveness of the Child Online Protection Act (“COPA”).<sup>32</sup> The Supreme Court case is currently blocking COPA’s usage in order to protect free speech rights.<sup>33</sup> The Justice Department also asked for a random sample of one million Web pages that can be searched through Google’s site.<sup>34</sup>

Google argued that it would not comply with the request because it gave the government unbridled access to information about their users violating their privacy, and also because compliance with the subpoena would expose Google’s trade secrets.<sup>35</sup> Additionally, Google argued that the government failed to demonstrate that the information would even be admissible evidence in court.<sup>36</sup> Other companies, such as AOL and Yahoo, chose not to fight the government and complied with the request for their Web pages and user’s search information already.<sup>37</sup>

On March 17, 2006, U.S. District Court Judge James Ware ruled that Google was not required to provide the internet searches, but was required to work with the government to construct a way to randomly obtain 50,000 Web Pages that could be handed over.<sup>38</sup> The Court ultimately granted part of the Justice Department’s request because it was narrowly tailored, but gave Google time to file objections to this order if

(Tech Privacy, continued on page 28)

## FEATURES

## Bioshield 2: A Shot in the Right Direction?

By Lindsay Frank

Despite the introduction of the Biodefense and Pandemic Vaccine & Drug Development Act of 2005 (“Bioshield 2”),<sup>1</sup> pharmaceutical companies are still reluctant to enter into the business of mass-producing vaccines,<sup>2</sup> and critics of the bill condemn the blanket liability protections it provides to these companies.<sup>3</sup>

Introduced by Sen. Richard Burr (R-N.C.) on October 17, 2005, Bioshield 2 was approved by a voice-vote the next day by the Senate Health, Education, Labor and Pensions Committee.<sup>4</sup> Bioshield 2 will allow drug companies to bypass typical testing procedures for new vaccines and drugs in case of an avian pandemic flu outbreak or bioterrorist attack.<sup>5</sup> Moreover, Bioshield 2 aims to shield the pharmaceutical companies who develop the vaccines against personal injury lawsuits brought by individuals suffering from adverse reactions or side effects caused by the vaccine.<sup>6</sup> The bill would offer 10-year market exclusivity to drug companies, which would prevent competitors from developing more affordable generic alternatives.<sup>7</sup>

This bill replaces the original Bioshield II legislation that was designed by Sens. Joseph Lieberman (D-Conn.) and Orrin Hatch (R-Utah).<sup>8</sup> Bioshield II died because its “wild card” patent

provision would have allowed pharmaceutical companies developing bioterrorist countermeasures to extend patents on their popular and exceedingly more profitable drugs, even if those drugs were unrelated to the production of countermeasures.<sup>9</sup>

For several years, the Bush Administration has desired that pharmaceutical companies increase their production of biodefense countermeasures with little or no incentives.<sup>10</sup> In fact, shortly after the anthrax attacks in 2001, the Center for Disease Control (“CDC”) asked Bayer Pharmaceutical, the makers of Cipro, to get the FDA to approve the drug as a treatment for anthrax.<sup>11</sup> Bayer acted in accordance with this request at their expense and further donated four million doses of Cipro to the government.<sup>12</sup> However, Bayer refused to comply with the government’s subsequent demand of an additional one million doses at a discounted price, despite threats to suspend their patent on Cipro.<sup>13</sup> Recognizing the need to provide pharmaceutical companies with greater incentives, Project Bioshield was signed into law in 2004.<sup>14</sup> The law provided the government with \$5.6 billion over the next 10 years for the purchase of vaccines and countermeasures designed to protect Americans against anthrax, small pox and a chemical, biological, radiological or nuclear (“CBRN”) attack.<sup>15</sup>

Despite the incentives to lure certain drug makers into the biodefense and pandemic flu market, very few of the large pharmaceutical companies jumped at the opportunity to accept the grants offered by the government.<sup>16</sup> One reason for their skepticism was the probable cost of approximately \$800 million to \$1 billion to develop a new drug without a guaranteed market for it.<sup>17</sup> Additionally, the large pharmaceutical companies did not avail themselves of the grant because they were reluctant to divert research from their popular and highly lucrative drugs to those that are stockpiled and used in the event of an unlikely emergency.<sup>18</sup> The pharmaceutical industry was also concerned with potential liability for administering bioterror drugs that cannot first be tested on humans.<sup>19</sup>

(Bioshield 2, continued on page 20)



Planning a national defense against bioterrorism and pandemic disease has proved contentious among politicians, pharmaceutical corporations, and public interest groups.

**FEATURES****(Bioshield 2, continued from page 19)**

In response to the lack of eagerness from larger pharmaceutical companies, some of the smaller pharmaceuticals companies have stepped up to the challenge in order to obtain a government contract.<sup>20</sup> Yet, in some instances, their tremendous efforts and equally high expectations have been met with disappointing results.<sup>21</sup> For instance, Hollis-Eden Pharmaceuticals, a small company located in San Diego, experienced first hand what many other companies had feared most.<sup>22</sup> The company eagerly pursued what would be its first government contract and spent more than \$100 million to develop Neumune, a medicine designed to combat acute-radiation sickness.<sup>23</sup> Yet after the Department of Health and Human Service's ("DHHS") initial request for bids, Hollis-Eden learned that the government only planned to buy 20,000 to 200,000 doses of their drug.<sup>24</sup> This number severely conflicted with what many industry watchers believed would be a proposal for doses numbering in the millions.<sup>25</sup> While the DHHS eventually stated that this was only a preliminary number,<sup>26</sup> it is not surprising that many companies have shied away from the potentially devastating risks in order to set their sights on more predictable and profitable endeavors.<sup>27</sup>

Yet after increased fears of another biological threat, avian flu, began to surface, the Bush Administration pushed for measures to fix some of Project Bioshield's highly criticized provisions.<sup>28</sup> Due to exceedingly high expenses and potential liability, the major pharmaceutical players pressed the legislature for more incentives to encourage entry into the speculative market of bioterrorist and pandemic flu countermeasures.<sup>29</sup>

Accordingly, Bioshield 2 was developed and proposes to create a new federal agency called the Biomedical Advanced Research and Development Agency ("BARDA") that would promote and coordinate "advanced research and development of drugs and vaccines in response to bioterrorism and natural disease outbreaks."<sup>30</sup> Moreover, BARDA would further streamline the approval process for biodefense products and assist companies from the early stages of product development until they are ready to bid on a government contract.<sup>31</sup> Currently,

the Department of Homeland Security is responsible for developing bioterrorism countermeasures.<sup>32</sup> Under Bioshield 2, BARDA would be protected from the Federal Advisory Committee Act and the Freedom of Information Act, which has sparked much controversy over the bill.<sup>33</sup> The Federal Advisory Committee Act ensures that advice given to the executive branch<sup>34</sup> is also given to the public, while the Freedom of Information Act requires federal agencies to make their records available to the public to the extent that they are available.<sup>35</sup> Instead, BARDA would be supervised by a political appointee and proposes to allow the research and development behind vaccines to be kept secret from the public.<sup>36</sup> Additionally, evidence of deaths and injuries occurring from drugs and vaccines labeled as "countermeasures" would also be kept under wraps.<sup>37</sup>

---

**"It's appalling that in the guise of a health-related bill, the government is giving the vaccine industry unprecedented immunity for the harm that their product can cause."**

**-Amber Hard, staff director for the Center for Justice and Democracy**

---

Bioshield 2 comes in wake of a \$7.1 billion strategy outlined in November 2005 by the Bush Administration to expand and accelerate pharmaceutical companies' capacity to produce vaccines within the United States, stockpile treatments against the H5N1 avian influenza A virus, and detect and respond to a pandemic flu outbreak.<sup>38</sup> In addition, Congress passed a defense bill last December that included \$3.8 billion, "mainly for flu vaccines and medicines."<sup>39</sup> The Bush Administration is hopeful that the new legislation will appease the pharmaceutical industry and enable companies to produce enough vaccines for every American within six months of the start of a pandemic outbreak.<sup>40</sup>

Proponents of the bill argue that a liability waiver is essential to avoid frivolous lawsuits, which they attribute to hindering the progress of vaccine

**(Bioshield 2, continued on page 21)**