AMERICA ON THE BRINK

The Impact of Budget Proposals on Justice, Job Creation, Public Safety, and Constitutional Rights

House Committee on the Judiciary Democratic Staff Interim Report to Ranking Member John Conyers, Jr.

February 23, 2011

Executive Summary and Conclusions

On February 11, 2011, Representative Harold Rogers (R-KY) introduced H.R. 1, the "Full-Year Continuing Appropriations Act of 2011". The current continuing resolution expires on March 4, 2011. H.R. 1 is intended to continue appropriations for the federal government for the remainder of Fiscal Year 2011. Additionally, the legislation contains budget cuts below Fiscal Year 2010 levels, for certain agencies and programs. Over five legislative days, the House debated H.R. 1 and agreed to 67 amendments that cut additional spending, prohibited certain spending, and restricted certain agency actions. In the early morning hours of February 19, 2011, by a recorded vote of 235-189, the House passed H.R. 1, as amended. According to the Economic Policy Institute, H.R. 1, as amended, could have an overall impact of eliminating 800,000 jobs.

This Report highlights the various adverse impacts that H.R. 1 could have on our Nation's economy and its ability to create jobs as well as on the public safety and well-being of our citizens. For example –

- H.R. 1 will force the Federal court system to layoff 2,400 staff, according to the Administrative Office of the U.S. Courts.

  This means that the federal courts would not be able to properly supervise individuals under pretrial release and convicted felons released from federal prisons, which could compromise public safety in the community.

- H.R. 1 will cause payments to attorneys who represent indigent criminal defendants, including capital cases, to be suspended thereby threatening the government's constitutional obligation to provide such representation, according to the Administrative Office.

  In light of the inability of criminal trials to proceed without defense counsel, and the time limits set by the Speedy Trial Act, this budget cutback could present unique legal issues.

  It could also lead to the dismissal of complaints and indictments against alleged felons, particularly along the Southwest Border.

- H.R. 1 cuts nearly $850 million of Migration and Refugee Assistance funding, which is used to protect refugees overseas and to settle them in the U.S.

  According to Eric Schwartz, Assistant Secretary of State for Population, Refugees and Migration, this cut "represents an American policy retreat of historic proportions, with unprecedented and really devastating effects on our leadership in saving lives and preventing conflict."

- H.R. 1 harms public safety by severely hampering the ability of law enforcement officials to monitor multiple purchases of rifles and shotguns that are used in violent criminal activity along the Southwest Border.

- H.R. 1 eliminates all funding for the National Drug Intelligence Center, which plays a major role in the fight against illegal drug proliferation both on the domestic and international fronts.

- H.R. 1 cuts funding to the Patent and Trademark Office by $400 million, which could undermine the ability of that agency to stimulate the economy and create American jobs, according to the Intellectual Property Owners Association.

The Report also briefly details how a government shutdown could destabilize federal law enforcement activities and potentially leave serious gaps in agency programs. Among other things, we find that:

- with respect to law enforcement, the Congressional Research Service reports that during the last government shutdown "delays occurred in the processing of alcohol, tobacco, firearms, and explosives applications by the Bureau of Alcohol, Tobacco, and Firearms; work on more than 3,500 bankruptcy cases reportedly was suspended; cancellation of the recruitment and testing of federal law enforcement officials reportedly occurred, including the hiring of 400 border patrol agents; and delinquent child-support cases were delayed."

- according to the Congressional Research Service, the processing of passports and visas effectively ceased during the last shutdown, interrupting the flow of international commerce, except in cases of extreme emergencies.

- The Department of Homeland Security may need to cease worksite enforcement actions, including I-9 audits and other efforts designed to check whether workers are authorized to work in the United States.

- The DHS may also have to terminate its administration of the E-Verify System, the electronic employment eligibility verification system that more and more employers use to determine whether workers are authorized to work.

- Customs and Border Patrol officers may no longer be able to inspect shipping containers of imported goods to collect duties or tariffs on such goods.

- A government shutdown could actually cost taxpayers money. According to a study conducted by Government Accountability Office in 1991, a three-day government shutdown in 1990 could have cost between $245 million and $607 million as a result of lost revenues and payment of salaries for work not performed.

We have reviewed the legislation and relevant law, and after discussions with advocates and the affected agencies, we provide the following analysis:

I. The Cuts and Restrictions in H.R. 1 Potentially Impact Federal Agencies and Grant Programs

A. How H.R. 1 Potentially Impacts Certain Department of Justice Programs

1. Community Oriented Policing Services (COPS)

As introduced, H.R. 1 would have completely eliminated the COPS Hiring Program, which had received funding of $298 million in FY 2010 and for which the President had requested $600 million for FY 2011. Since its inception, COPS has funded the hiring of more than 122,000 state and local police officers and sheriff's deputies in communities across America. The funding cut from the President's requested level would have meant that 3,000 fewer officers would be hired or rehired to be on the streets of our neighborhoods. During floor consideration of H.R. 1, the House adopted Rep. Weiner's amendment to restore funding to the COPS Hiring Program to the FY 2010 level of $298 million.

2. Federal Bureau of Investigation (FBI)

The Republican funding cut of $133 million will delay construction of badly needed training facilities at the FBI Academy in Quantico. This could impact the FBI's effort to update and strengthen training for agents and intelligence analysts to maintain the fight against terrorism, sexual exploitation of children, drugs and other major threats to the U.S. from foreign and domestic sources.

3. United States Marshalls Services (USMS)

The USMS is responsible for protecting judges which is critically important in light of recent threats to federal judges. The USMS also secures courthouse detention facilities that hold defendants accused of drug, gun and immigration crimes. The Republican funding cut in H.R. 1 of $9.7 million could delay and possibly eliminate over $100 million in needed upgrades in security and construction of courthouse detention areas and facilities, the impact of which will be most acutely felt on the Southwest Border.

4. Law Enforcement Wireless Communications

This DOJ program provides critical support to law enforcement officers and agents in major metropolitan areas across the nation in responding to terrorist attacks or other catastrophic incidents. The Republican funding cut in H.R. 1 of $70 million will reduce by more than half the money used by the program to eliminate interoperability issues with wireless communications, and could jeoparde officer and public safety and the safety of millions of Americans.

5. DOJ General Legal Activities

DOJ's principal divisions, including the Civil Rights Division, the Antitrust Division, Environment and Natural Resources Division, and Civil Division are funded under the category of general legal activities. The Civil Rights Division, which was chronically underfunded by the Bush administration, will have to play a critical role with respect to how states and localities redraw their district lines following the decennial Census. As required under section 5 of the Voting Rights Act, the Department of Justice will have to "pre–clear" all voting changes. The Civil Rights Division is expecting more than 800 submissions this year and next. The Republican budget cut in H.R. 1 of $10 million could undermine the ability of these divisions to protect the civil rights and interests of all Americans.

6. State and Local Law Enforcement Assistance Programs

H.R. 1 budget reductions of $581 million will eliminate or essentially gut proven crime prevention and crime reduction programs that localities have used to keep crime rates down. These cuts could result in increased crime and victimizations, more unemployment and more resulting expenditures than these cuts save in federal, state and local law enforcement activities, imprisonments and other costs.

7. National Drug Intelligence Center

As introduced, H.R. 1 would have provided $10.6 million less than the amount requested by the President for FY 2011. The Center plays a major role in the fight against international and national illegal drug proliferation. During floor consideration of H.R. 1, the House adopted Rep. Jeff Flake's amendment to eliminate the $34 million in funding for the Center.

8. National Instant Criminal Background Check System

After the tragic shootings at Virginia Tech in 2007, Congress passed the National Instant Criminal Background Check System Improvement Act with the goal of increasing the availability to the system of records of information which would disqualify individuals from being able to possess firearms. During floor consideration of H.R. 1, the House adopted an amendment to direct $20 million to funding this effort.[1]

9. Juvenile Justice Programs

H.R. 1 cuts over $191 million in grants dedicated to juvenile justice programs. The DOJ, Office of Justice Programs, Juvenile Justice Programs strengthen community safety and reduce victimization by setting standards and performance measures for the nation's juvenile justice systems, supporting delinquency prevention and early intervention, and contributing to the prevention and reduction of youth crime and violence. These critical programs enable states and communities to improve the juvenile justice system so that it provides critical treatment and rehabilitative services, in safe conditions, that are tailored to the needs of juveniles and their families; protects public safety; and, holds offenders accountable. Ultimately, by preventing and reducing crime and violence, these programs yield significant savings. Research reveals that taxpayers save as much as $2 million for every child who is prevented from becoming delinquent.

The reductions in H.R. 1 will gut proven state and community juvenile justice interventions and programs that keep youth and families safe and keep crime rates down. The following programs will be severely undermined, if not eliminated, by the cuts:

- Enforcing underage drinking laws;
- Formula Grants Program;
- Gang Resistance Education Training Program (GREAT);
- Juvenile Accountability Block Grant Program;
- Title V Incentive Grants for Local Deliquency Prevention Programs;
- Tribal Youth Program

These cuts to juvenile justice programs could increase crime and victimization, including the collateral costs of crime and violence; increase substance abuse; exacerbate mental health conditions; increase unemployment and incarceration; and increase overall long term expenditures in federal, state and local law enforcement activities, imprisonment and other costs more than these cuts would save.

10. Reporting Multiple Sales of Rifles and Shotguns

The House adopted an amendment which prohibits the use of funds to require licensed firearms dealers to report information to the Justice Department regarding the multiple sales of

[1] Representative Rush Holt (D-NJ) introduced Amendment No. 12, which reads as follows:

> AMENDMENT NO. 12: Page 202, line 16, after the dollar amount, insert ''(reduced by $20,000,000) (increased by $20,000,000)''.

rifles or shotguns to the same person.[2] The amendment preempts the Obama administration's consideration of a rule to require licensed gun dealers operating in the border states of Texas, New Mexico, Arizona and California to report when an individual buys more than one long gun within five business days – just as they currently report for handgun sales.[3] The amendment could harm public safety because long guns, including semiautomatic assault rifles, purchased in the United States are being smuggled to Mexico by drug cartels and used in violent criminal activity along the southwest border.

B. How H.R. 1 Potentially Impacts Other Certain Federal Agencies and Programs

1. Migration and Refugee Assistance

In Fiscal Year 2010, Congress appropriated $1.850 billion for Migration and Refugee Assistance funds, which are used to protect refugees overseas and to admit refugees to the United States. The House-passed CR reduces that figure to $1.023 billion, a cut of nearly $850 million. According to Eric Schwartz, Assistant Secretary of State for Population, Refugees and Migration, this cut "represents an American policy retreat of historic proportions, with unprecedented and really devastating effects on our leadership in saving lives and preventing conflict."[4]

Funds from this account are used to support the work of international organizations, such as the United Nations High Commissioner for Refugees and the International Committee of the Red Cross, which provide on-the-ground protection to refugees fleeing persecution. Failing to properly fund these efforts could place lives at risk. The cut could jeopardize our ability to meet the President's goal of resettling 80,000 refugees in the U.S. this fiscal year.

Supporters of the House-passed CR argue that the cut merely rolls back spending to the level in Fiscal Year 2008. This is factually incorrect and it ignores the fact that global refugee needs continue to grow. As an initial matter, Congress appropriated $1.3 billion—not $1 billion—to Migration and Refugee Assistance in Fiscal Year 2008, counting additional funds included in a supplemental spending bill. Furthermore, budget increases have followed the increasing number of refugees worldwide. According to Assistant Secretary Schwartz, "U.S. refugee programs in Africa, Burma, Iraq and elsewhere 'would be decimated' under the [House-passed CR]."[5]

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[2] Representative Dan Boren (R-OK) introduced Amendment No. 566, which reads as follows:

> AMENDMENT NO. 566: At the end of the bill (before the short title), insert the following:
> Sec. ll. None of the funds made available by this Act may be used to require a person licensed under section 923 of title 18, United States Code, to report information to the Department of Justice regarding the sale of multiple rifles or shotguns to the same person.

[3] James V. Grimaldi, *Gun-Sale Reporting Plan Hits a Snag*, WASH. POST, Feb. 20, 2011, at A5. ("The amendment . . . prohibits the Bureau of Alcohol, Tobacco, Firearms and Explosives from using federal money to require licensed firearm dealers to report multiple sales of assault weapons.").

[4] Mary Beth Sheridan, "House Budget Bill's Deep Cuts in Humanitarian Aid Criticized," Washington Post, Feb. 16, 2011, available at: http://www.washingtonpost.com/wp-dyn/content/article/2011/02/16/AR2011021606390.html.

[5] Id.

2. Office of Refugee Resettlement

The CR rescinds $77 million in unobligated funds previously provided to the Office of Refugee Resettlement (ORR). ORR is historically underfunded for its important work assisting refugees who are resettled in the United States. The rescission of funds will make it more difficult for ORR to help resettled refugees transition to life in this country and obtain self-sufficiency.

3. Immigration Integration

The CR eliminates all funding for the Office of Citizenship within U.S. Citizenship and Immigration Services. By defunding the Office and the President's Integration Initiative, no grants will be available for programs that fund state agencies and non-governmental organizations to help prepare lawful permanent residents to apply for and obtain citizenship. This will increase the burden on cash-strapped state and local governments and decrease the provision of civics-based English language classes that help aspiring citizens integrate into their communities. The President's budget request in Fiscal Year 2011 was only $18 million. This small investment has a big payoff: it assists immigrants become proud, new American citizens who have studied English and the fundamentals of our government and who understand the rights and responsibilities of citizenship. The President's proposed budget for Fiscal Year 2012 increases this investment to $20 million.

4. The Federal Judiciary

H.R. 1 will cut $145 million in funding for the federal judiciary. This Republican cut could result in the federal courts furloughing more than 2400 probation officers and pretrial services officers and to stop payments to attorneys who represent indigent criminal defendants under the Criminal Justice Act, which raises constitutional concerns about the availability of adequate criminal defense services. These cuts could undermine public safety and the effective administration of justice at a time when criminal caseloads and the workloads of probation and pretrial services offices have reached an all-time high.

5. Legal Services Corporation (LSC)

LSC provides grants to support access to justice to our fellow Americans in need. H.R. 1 reduces LSC's funding by an average of 18% which will result in a layoff of about 370 staff attorneys in local programs, the closure of many rural offices, and less civil access to justice for about 160,000 Americans who will go without the services of an attorney. This includes women seeking safety for themselves and their children from domestic violence, veterans returning to civilian life without a job, and senior citizens trying to save their homes from foreclosure.

The proposed $70 million cut is from the Fiscal Year 2010 funding of $394.4 million provided to LSC programs. An effort by Rep. Jeff Duncan (R-SC) to eliminate all funding for LSC programs was defeated on a bipartisan vote, 259 to 171, on February 16.[6]

[6] Representative Jeff Duncan (R-SC) introduced Amendment 110, which reads as follows:

6. Privacy and Civil Liberties Oversight Board

Established on the recommendation of the 9/11 Commission, the purpose of the Privacy and Civil Liberties Oversight Board is to establish a watchdog group within the Executive Office of the president to help maintain an appropriate balance between national security and civil liberties. H.R. 1 cuts funding to the board by $1.6 million.

7. Election Assistance Commission and Federal Election Commission

These commissions safeguard the election process, promote transparency, fight corruption, and protect our citizen's right to vote. The Republican budget cut in H.R. 1 of $6 million undermines this critical process and fundamental right.

8. Equal Access to Justice Act (EAJA)

An amendment to H.R. 1 eliminates the heart of the EAJA.[7] The EAJA awards attorney's fees ($125 per hour) when a citizen or small business litigates against the federal government and proves that the federal government was not "substantially justified" in bringing or defending the suit.[8] EAJA deters the federal government from initiating unmeritorious enforcement actions against small businesses or individuals.[9] H.R. 1 could lead to more federal government lawsuits against small businesses and individuals and could financially burden them.

9. United States Patent and Trademark Office (USPTO)

The USPTO examines and approves applications for patents on claimed inventions and administers the registration of trademarks. It also aids in the protection of American intellectual property internationally. The USPTO is fully funded by user fees paid by customers. The Republican funding plan limits USPTO to 2010 user fee projected levels, which will deprive the

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AMENDMENT NO. 110: Page 208, line 14, after the first dollar amount inside the quotes, insert "(reduced by $324,400,000)".

Page 208, line 15, after the first dollar amount inside the quotes, insert "(reduced by $324,400,000)".

[7] Representative Cynthia Lummis (R-WY) introduced Amendment 195, which reads as follows:

> AMENDMENT NO. 195: At the end of the bill (before the short title), insert the following:
> SEC. ll. None of the funds made available by this Act may be used for the payment of fees and other expenses under section 504 of title 5, United States Code, or section 2412(d) of title 28, United States Code.

[8] 5 U.S.C. §504.

[9] President Ronald Reagan, in his signing statement to extend the Equal Access to Justice Act, stated:

> "I am pleased to be able to approve H.R. 2378, a bill to extend the Equal Access to Justice Act. I support this important program that helps small businesses and individual citizens fight faulty government actions by paying attorneys' fees in court cases or adversarial agency proceedings where the small business or individual citizen has prevailed and where the government action or position in the litigation was not substantially justified."
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> Statement on Signing the Bill Extending the Equal Access to Justice Act
> August 5, 1985

overburdened patent office of approximately $200 million it collects in fees, and an additional $200 million from a fee surcharge and supplemental amount in the 2011 budget.[10] This will exacerbate the over 700 thousand application backlog the USPTO currently faces, prevent needed upgrades in technology to insure quality patents, and freeze hiring of additional examiners. Many of the improvements recently initiated to increase efficiency and decrease backlog will have to be abandoned. Of the 700 thousand patents pending, many are in the health related field or involve technological advancement. The cut in H.R. 1 will stymie private sector patent reliant industries, undercut job growth and creation and further delay the development of potentially life-saving pharmaceuticals, as well as other technological improvements.

C. How H.R. 1 Potentially Impacts the Implementation of Certain Existing and Future Regulations

The Republican majority also adopted several amendments to H.R. 1 which could hamper the implementation of existing and future regulations, particularly rules concerning environmental protection and the implementation of the health care reform legislation package (consisting of the Patient Protection and Affordable Care Act (Public Law 111-148) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152)). These amendments could undermine rules by denying funds for the implementation of specific rules or by denying funds to pay the salaries of those charged with implementing rules.

The amendments targeting environmental regulations include:

- Amendment No. 13, introduced by Representative Thomas Rooney (R-FL), and agreed to by a recorded vote of 237-189, prohibits the use of funds from being used to implement, administer, or enforce the EPA's rule entitled "Water Quality Standards for the State of Florida's Lakes and Flowing Waters" published in the Federal Register by the EPA on December 6, 2010;
- Amendment No. 94, introduced by Representative John Sullivan (R-OK), and agreed to by a recorded vote of 285-136, prohibits the use of funds to implement the EPA administrator's decision entitled "Partial Grant of Clean Air Act Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 percent";[11]
- Amendment No. 109, introduced by Representative Morgan Griffith (R-VA), and agreed to by a recorded vote of 235-185, prohibits the use of funds to the EPA, the Corps of Engineers, or the Office of Surface Mining Reclamation and Enforcement may be used to carry out, implement, administer, or enforce any policy or procedure set forth in the memorandum issued by the EPA;

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[10] Ellen Rosen, *U.S. Patents Held Hostage by Skimming Lawmakers in Budget Fight*, BLOOMBERG, Feb. 18, 2011, http://www.bloomberg.com/news/2011-02-22/apple-fda-u-s-patent-office-nokia-intellectual-property.html (The U.S. Patent and Trademark Office, one of the few self-funded federal agencies, may not be able to use an estimated $200 million in fees to be collected from patent and trademark owners in fiscal 2011 because Congress requires that the money be sent to the general treasury).

[11] EnvironmentalLeader.com, House-Approved Budget Blocks EPA Rules, http://www.environmentalleader.com/2011/02/22/house-approved-budget-blocks-epa-rules/ (last visited Feb. 23, 2011) ("The [budget proposal] cuts billions of dollars from the EPA's budget, and includes amendment[s] denying 2011 funds for the agency's greenhouse gas regulations, . . . and keeping the EPA from permitting higher amounts of ethanol in newer vehicles . . . .").

- Amendment No. 165, introduced by Representative John Carter (R-TX), and agreed to by a recorded vote of 250-177, prohibits the use of funds to be used to implement, administer, or enforce the rule entitled "National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants" published by the Environmental Protection Agency on September 9, 2010;
- Amendment No. 177, introduced by Representative Wally Herger (R-CA), and agreed to by a recorded vote of 227-197, prohibits the use of funds by the Secretary of Agriculture to implement or enforce Subpart B of the Travel Management Rule, relating to the designation of roads, trails, and areas for motor vehicle use in any administrative unit of the National Forest System;
- Amendment No. 216, introduced by Representative David McKinley (R-WV), and agreed to by a recorded vote of 240-182, prohibits the use of funds by the EPA administrator from carrying out section 404(c) of the Federal Water Pollution Control Act, which authorizes the EPA to deny or restrict use of defined disposal sites for landfill or dredged material where, after notice and comment, it determines that there would be harm to municipal water supply, shellfish beds and fishery areas, or wildlife and recreation areas;
- Amendment No. 217, introduced by Representative David McKinley (R-WV), and agreed to by a recorded vote of 239-183, prohibits the use of funds by the EPA to develop, propose, finalize, implement, administer, or enforce any regulation that identifies or lists fossil fuel combustion waste as hazardous waste that is subject to regulation;
- Amendment No. 404, introduced by Representative Greg Walden (R-OR), and agreed to by a recorded vote of 244-181, prohibits the use of funds used to implement the Report and Order of the Federal Communications Commission relating to the matter of preserving the open Internet and broadband industry practices (FCC 10-201, adopted by the Commission on December 21, 2010);[12]
- Amendment No. 466, introduced by Representative Ted Poe (R-TX), and agreed to by a recorded vote of 249-177, prohibits the use of funds by the EPA to implement, administer, or enforce any statutory or regulatory requirement pertaining to emissions of greenhouse gases;[13]
- Amendment No. 467, introduced by Representative Bob Goodlatte (R-VA), and agreed to by a recorded vote of 230-195, prohibits the use of funds from being used to develop, promulgate, evaluate, implement, provide oversight to, or backstop the total maximum daily loads or watershed implementation plans for the Chesapeake Bay Watershed;[14]

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[12] Eliza Krigman, *House Approves Rider to Defund FCC Net Rules*, POLITICO, Feb. 17, 2011, *available at* http://www.politico.com/news/stories/0211/49754.html ("That vote represents the most serious legislative threat to net neutrality yet. As part of the budget bill needed to fund the government, it will be difficult to veto if it reaches President Barack Obama's desk.").

[13] ClimateScienceWatch.org, House Republicans Seeking to use Crucial Budget Resolution to Kill EPA Greenhouse Gas Regulation, http://www.climatesciencewatch.org/2011/02/12/house-republicans-seeking-to-use-cr-to-kill-epa-ghg-regs/ (last visited Feb. 23, 2011) ("The CR includes language that would prohibit EPA from implementing its science-based regulation of greenhouse gas emissions, as required under the Clean Air Act.").

[14] John Collins Rudolf, *Republican Moves to Strip Funds for Chesapeake Bay Cleanup*, N.Y. Times, Feb. 16, 2011, *available at* http://green.blogs.nytimes.com/2011/02/16/republican-moves-to-strip-funds-for-chesapeake-bay-cleanup/?ref=science (Representative Bob Goodlatte of Virginia took aim at an EPA program the goal of which is to

- Amendment No. 495, introduced by Representative Ralph Hall (R-TX), and agreed to by a recorded vote of 233-187, prohibits the use of funds to implement, establish, or create a NOAA Climate Service as described in the "Draft NOAA Climate Service Strategic Vision and Framework" published at 75 Feb. Reg. 57739;
- Amendment No. 498, introduced by Representative Bill Johnson (R-OH), and agreed to by a recorded vote of 239-186, prohibits the use of funds to develop, carry out, implement, or otherwise enforce rules published by the Office of Surface Mining Reclamation and Enforcement of the Department of the Interior concerning stream water quality protection; and
- Amendment No. 563, introduced by Kristi Noem (R-SD), and agreed to by a recorded vote of 255-168, prohibits the use of funds to modify the national primary ambient air quality standard or the national secondary ambient air quality standard applicable to coarse particulate matter under the Clean Air Act.

The amendments targeting implementation of the health care reform legislation passed in the 111th Congress, include:

- Amendment No. 79, introduced by Representative Cory Gardner (R-CO), and agreed to by a recorded vote of 241-184, prohibits the use of funds to pay the salary of any officer or employee of the Department of Health and Human Services who develops or promulgates regulations or guidance with regard to health insurance exchanges under subtitle D of title I of the Patient Protection and Affordable Care Act;
- Amendment No. 267, introduced by Representative Steve King (R-IA), and agreed to by a recorded vote of 241-187, prohibits the use of funds to carry out the provisions of the Patient Protection and Affordable Care Act, the Health Care and Education Reconciliation Act of 2010, or any amendment made by either law;
- Amendment No. 268, introduced by Representative Steve King (R-IA), and agreed to by a recorded vote of 237-191, prohibits the use of funds to pay the salary of any officer or employee of any Federal department or agency with respect to implementing the provisions of the Patient Protection and Affordable Care Act, the Health Care and Education Reconciliation Act of 2010, or any amendment made by either law;
- Amendment No. 430, introduced by Representative Joseph Pitts (R-PA), and agreed to by a recorded vote of 239-183, prohibits the use of funds to pay the salary of any officer or employee of the Departments of Health and Human Services, Labor, or the Treasury who takes any action to specify or define, through regulations, guidelines, or otherwise, essential benefits under section 1302 of the Patient Protection and Affordable Care Act; and
- Amendment No. 575, introduced by Representative Denny Rehberg (R-MT), and agreed to by a recorded vote of 239-187, prohibits the use of funds to pay any employee, officer, contractor, or grantee of any department or agency to implement the provisions of the Patient Protection and Affordable Care Act or title I or subtitle B of title II of the Health Care and Education Reconciliation Act of 2010.[15]

"restore clean water to the Chesapeake and to tributaries such as the Shenandoah River, a polluted river flowing through Congressman Goodlatte's own district").

[15] David Herszenhorn, *House Republicans Push Through Budget Amendments*, N.Y. TIMES, Feb. 18, 2011, *available at* http://thecaucus.blogs.nytimes.com/2011/02/18/house-republicans-push-through-budget-amendments/?scp=6&sq=planned%20parenthood&st=cse ("One amendment . . . would prohibit 'funds from being

An adopted amendment to H.R. 1 could hamper the rulemaking process generally:

- Amendment No. 204, introduced by Representative Steve Scalise (R-LA), and agreed to by a recorded vote of 249-179, prohibits funds from being used to pay the salaries and expenses for nine federal offices and positions: (1) Director, White House Office of Health Reform; (2) Assistant to the President for Energy and Climate Change; (3) Special Envoy for Climate Change; (4) Special Advisor for Green Jobs, Enterprise and Innovation, Council on Environmental Quality; (5) Senior Advisor to the Secretary of the Treasury assigned to the Presidential Task Force on the Auto Industry and Senior Counselor for Manufacturing Policy; (6) White House Director of Urban Affairs; (7) Special Envoy to oversee the closure of the Detention Center at Guantanamo Bay; (8) Special Master for TARP Executive Compensation, Department of the Treasury; and (9) Associate General Counsel and Chief Diversity Officer, Federal Communications Commission.

II. Impact of A Federal Government Shutdown on Areas within the Judiciary Committee's Purview

Now that Congress has passed H.R. 1, the Senate must now address the legislation. If the Congress, the Senate, and the President do not agree to a budget for the remainder of this fiscal year by March 4, the Federal Government will be unfunded. Federal agencies and grant programs will need to cease functions except for limited circumstances.

Under the Antideficiency Act[16], federal agencies and programs must cease operations when they lack appropriations or experience a gap in funding. In instances where Congress and the President have failed to timely reach an agreement on the budget, the government is required to cease operations, except on an emergency basis. The longest government shutdown lasted 21 days, from December 16, 1995, to January 6, 1996, necessitating the furlough of several hundred thousand federal employees and impacting numerous sectors of the economy. Programs that are funded by laws other than annual appropriations acts (e.g., entitlements like Social Security) also may be affected by a funding gap, if program execution relies on activities that receive annually appropriated funding.

A government shutdown could destabilize federal law enforcement activities and potentially leave serious gaps in agency programs. For example,

- The routine function of FBI, ATF and DEA offices may be interrupted, leaving only a skeleton staff to handle developing cases and filings. For example, in the 1995 shutdown, delays occurred in the processing of alcohol, tobacco, firearms, and explosives applications. In addition, the shutdown resulted in the cancellation of the recruitment and testing of federal law enforcement officials, including the hiring of 400 border patrol agents.

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used to pay any employee, officer, or contractor to implement the provisions of the president's health care law.' It was approved by 239 to 187.").

[16] 31 U.S.C. §1341.

- U.S. Attorney Offices would be closed for all but pending cases.

- The Civil Rights Division would be closed, with the exception of emergency staff for pending litigation, slowing the march toward equal protection under the law.

- The administration of major Department of Justice programs (e.g., VAWA, Antitrust, and Bankruptcy) may be put on hold, interrupting both civil and criminal law enforcement activities. During the 1995 shutdown, work on more than 3,500 bankruptcy cases reportedly was suspended, along with a substantial number of Hart-Scott antitrust reviews.

- The grants administered by the Department of Justice such as the COPS Hiring Grant Program, Edward Byrne Memorial Justice Assistance Grants to state and local law enforcement, and Second Chance Act grants, may be disrupted with the potential for substantial impact on public safety.

- The processing of passports and visas would cease, interrupting the flow of international commerce. In the 1995 shutdown, approximately 20,000-30,000 applications by foreigners for visas reportedly went unprocessed each day; 200,000 U.S. applications for passports reportedly went unprocessed; and U.S. airlines, hotels, and tourist industries reportedly sustained millions of dollars in losses.

- The Department of Homeland Security (DHS) may need to cease worksite enforcement actions, including I-9 audits and other efforts designed to check whether workers are authorized to work in the United States. DHS may need to cease administering its E-Verify system—the electronic employment eligibility verification system that more and more employers are using to determine whether workers are authorized to work.

- Grants administered by the Legal Services Corporation would be halted, resulting in inadequate legal representation to military families, senior citizens, and domestic violence survivors within weeks.

- A government shutdown may force Administrative Conference of United States (ACUS) to furlough its entire staff and to stop all work, undermining its mission of promoting effective public participation and efficiency in the rulemaking process through consensus-driven applied research and providing nonpartisan expert advice and recommendations for improvement of federal agency procedures.

- The United States Patent and Trademark Office would likely close which would result in an increased backlog of patent applications, impacting business development and innovation protections.