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In-Depth on **Education**

HB 1171 - The LA GRAD Act:
Institutional Autonomy and Violation
of the Public Trust

Louisiana's Hidden State Budget

CABL Recommendations to
Move Higher Education Forward

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Legislative Session Wrap-Up

- Roadblocks to Change in Juvenile Justice Reform
- Back to the Future: Louisiana's Open Primaries Bill

**BP's Blow Up and DC's Debacle
Irony as Thick as Gulf Oil**



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Welcome!

This spring, the Louisiana Legislature addressed a wide array of policy issues from education to the budget and from the mundane to the bizarre. In this issue we examine and evaluate some of the initiatives put forward during the 2010 Legislative session from a progressive perspective. The authors provide analyses of positive steps forward, discussions of setbacks, and ideas for advancing policies that will have a positive impact on the lives of the people of Louisiana.

The future of higher education in the state has been and will continue to be hotly debated as the fate of our young people hangs in the balance. Thus, we take an in-depth look at the state of higher education reform and offer some concrete policy solutions to put the state back on the path to success.

And, what publication discussing the 2010 session could be complete without a discussion of the catastrophe that overshadowed practically everything else: the oil spill in the Gulf of Mexico. The issue concludes with two articles analyzing and critiquing the State's response to this disaster.



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Roadblocks to Change

Juvenile Justice Reform and the Louisiana 2010 Legislative Session

By: Meghan Harwell

“One of the most persistent roadblocks to juvenile justice reform across the country is resistance to change.”¹

Louisiana’s juvenile justice system has seen significant progress in the last fifteen years. Examples include the closing of the Swanson Center for Youth at Tallulah, the closing of the Jena Juvenile Center, the downsizing of the Jetson Center for Youth, and the decreased number of juveniles in secure facilities. There is, however, much more to do to achieve the kinds of results that have been seen, for example, in Missouri, where the “Missouri Model” represents the highest standard of juvenile justice reform, with its focus on therapy, community living, education and job training.²

Louisiana is often cited as one of the states that has pledged to implement this model in its juvenile system.³ In spite of the recent progress in Louisiana’s juvenile system that might indicate a meaningful commitment to building a rehabilitative model, some current legislation betrays that goal by emphasizing punishment at the cost of rehabilitation. Our juvenile justice system has significant roadblocks to overcome before it truly resembles the Missouri Model.

In order to measure Louisiana’s progress toward achieving a rehabilitative juvenile justice model, this article will discuss how the 2010 Louisiana Legislative Session highlights both our recent progress as well as our shortcomings. With an emphasis on both punish-



ment and rehabilitation, the juvenile justice bills from the 2010 Session reveal the challenges that Louisiana faces in progressing forward.

This article will attempt to demonstrate this by discussing the bulk of the bills that passed in the Legislature on the topic of juvenile justice, accompanied by a discussion of their possible impact on juvenile justice reform. Then will follow a discussion of some of the bills that failed, particularly those that were the most geared toward protecting a juvenile’s rights and encouraging rehabilitation.

The Right to Counsel

Act 593,⁴ introduced as House Bill 663 by Representatives Leger, Baldone, and Howard, represents a step toward protecting the rights of juvenile offenders at their adjudication hearings. It amended Article 320 of the Louisiana Children’s Code to provide that, “[f]or purposes of the appointment of counsel, children are presumed to be indigent.” Prior to this change, Article 320 simply provided that the court may determine the indigency of a person entitled to counsel “at any stage of the proceedings,” which can delay the appointment of counsel. The official comments to this new provision

1 Marian Wright Edelman, “Juvenile Justice Reform: Making the ‘Missouri Model’ an American Model, The Huffington Post, March 15, 2010; http://www.huffingtonpost.com/marian-wright-edelman/juvenile-justice-reform-m_b_498976.html, (accessed October 1, 2010).

2 Stephanie Chen, “Teen offenders find a future in Missouri,” August 25, 2009, Thursday; <http://www.cnn.com/2009/CRIME/08/25/missouri.juvenile.offenders/index.html?iref=allsearch> (accessed October 1, 2010).

3 Some of the other states working to emulate the Missouri Model include New Mexico, California, and Virginia. See also 2010 House Concurrent Resolution 245/Senate Concurrent Resolution 131, urging and requesting the Louisiana Law Institute to evaluate the state’s progress toward achieving the “Missouri Model” of juvenile justice reform.

4 The act passed as follows: House: 91 yeas, 0 nays, and 12 absent; Senate: 30 yeas, 0 nays, and 9 absent. It should be noted that this Act also amends Children’s Code articles, 321, 809, and adds new Article 881.1, discussed infra.

note that “[i]ts adoption should result in expediting the appointment of counsel for accused delinquents and often, an earlier disposition of the case” and that “a presumption of indigence is a key component of expediting representation from diversion to appeals.” This change in presumption will allow a public defender immediate access to the juvenile in the critical early stages of the proceedings.⁵

The fiscal note to the new Article 320 suggests that the presumption that children are indigent will not have a direct effect on government expenditures, as present law already provides that children have a right to legal counsel. Accordingly, the fiscal note states, attorneys under contract to represent the indigent will simply be able to meet with their clients at an earlier point in the proceedings. Whether or not this is true remains to be seen. It is possible that this change could increase public defenders’ already stretched caseloads; without a concomitant increase in funding, there is a possibility that providing adequate representation to juveniles may be jeopardized.

This change in the law may also have an ancillary impact on the ubiquitous practice of waiver of counsel (pursuant to the procedure outlined in Louisiana Children’s Code Article 810) by juveniles in Louisiana. A 2001 study by the American Bar Association reported that there is “an extremely high incidence of waiver of counsel among children” in Louisiana.⁶ The practice in Louisiana has devolved into a “rampant and routine” waiver of counsel by juveniles very early in the proceedings.⁷ This results in high numbers of uncontested

pleas. Ten years ago, Louisiana’s juvenile system was described as a “plea mill” or a conveyor belt used to shuffle children through the system.⁸ This is despite the fact that the Children’s Code specifically sets forth the Sixth Amendment principle that an accused is entitled to counsel “at every stage of the proceedings.”⁹ A vast number¹⁰ of juveniles are underserved when they fail to receive effective assistance of counsel as early as possible in delinquency proceedings. The lack of access by

the public defender, along with the high incidence of waiver of counsel contributes to a juvenile system that leaves Louisiana’s youth “literally, defenseless.”¹¹ This amendment to Article 320 is a step in the right direction: to ensure that all children facing delinquency proceedings receive early access to effective counsel.

Juvenile Detention Standards

The most significant step toward juvenile justice reform in Louisiana from the 2010 Legislative Session is found in Act 863, introduced by Representative Baldone as House Bill 1477, providing for juvenile detention licensing standards. Secure detention facilities in Louisiana are organized at the local level, funded by parish governments and administered by parish boards, commissions, juvenile courts and law enforcement.¹² Act 863 requires that new standards be developed for juvenile detention centers and that each center be licensed according to the new standards by 2012.

Most importantly, in five years, all detention facilities in Louisiana will have to comply with licensing

The “Missouri Model” represents the highest standard of juvenile justice reform, with its focus on therapy, community living, education and job training.

5 See also Siegel and Helemba, Importance of Timely Case Processing in Non-Detained Juvenile Delinquency Cases, National Criminal Justice Reference Service, Department of Justice (2006) (Also cited in the Revision Comments to Article 320 after emphasizing the necessity of timely case processing in order to disrupt the development of habitual delinquent behavior).

6 “The Children Left Behind: An Assessment of Access to Counsel and Quality Representation in Delinquency Proceedings in Louisiana,” Annual Update: 2002 Summary, American Bar Association Juvenile Justice Center, June 2002; http://jjpl.org/PDF/Children_Left_Behind.pdf (accessed October 1, 2010).

7 Steven A. Dixon, “The Worst of Both Worlds: Punishments and Procedures for Children in Louisiana,” Southern University Law Review, Fall, 2003, Juvenile Justice Symposium, 30 S.U.L. Rev. 329 (2003), 341-344 (for a more complete dis-

ussion of the persistent and problematic waiver of counsel in spite of Children’s Code provisions designed to carefully safeguard a juvenile’s right to counsel).

8 Steve Ritea, “Report Says Young Offenders Poorly Represented in Court: Louisiana’s Juvenile System Called ‘Plea Mill,’” Times-Picayune, June 9, 2001, 3.

9 Louisiana Children’s Code Article 809 A.

10 “The Children Left Behind,” supra, 59-62. The report noted that courts in some jurisdictions allowed waiver of counsel in 90-95% of cases.

11 “The Children Left Behind,” supra.

12 “State Juvenile Justice Profile: Louisiana,” National Center for Juvenile Justice, (January 25, 2008), <http://www.ncjjservicehttp.org/stateprofiles/profiles/LA06.asp> (accessed October 1, 2010).

standards. Juvenile detention centers have never been licensed by the State of Louisiana Youth Services Office of Juvenile Justice, although there have been some attempts to regulate them in the past. In 2003, Act 1225 (the Juvenile Justice Reform Act) purported to require the development of secure detention standards and state licensing procedures for local detention facilities.¹³ The 2003 Act included the formation of a task force to study and determine whether licensing standards were needed for Louisiana detention facilities on a range of topics, including operational requirements, staff qualifications, staffing ratios for direct care workers to residents, admissions policies, diagnostic and assessment standards for screening youth at intake, risk and needs assessments for applying detention alternatives, and access to required services in facilities like health care, education, and behavioral health services.¹⁴ Act 863 is a small step toward progress, but it is a crucial one, and the inclusion of a discrete timeline provides the pressure and accountability that standard regulating attempts in the past have lacked.

The local-operation model for secure detention facilities has led to varied policies and standards across the state, often with disastrous results. Although Louisiana has arguably seen progress since the days of the notoriously abusive Swanson Correctional Center for Youth (known as Tallulah), hope for a rehabilitative system remains endangered as abuses persist. In March of 2010, seven former guards of the Terrebonne Parish Juvenile Detention Center were indicted on counts of molestation of a juvenile and sexual malfeasance in office, for alleged sexual abuse of young female inmates

13 This year new legislation was passed with respect to the Juvenile Justice Reform Act Implementation Commission. Act 571 provides for the composition of the members of the commission, including: a Louisiana Supreme Court Justice, a representative from the Louisiana District Attorneys Association, and a representative appointed by the state public defender. In 2010, a chairperson is to be appointed by the speaker of the House of Representatives, and in 2011 chairperson will be appointed by the president of the Senate, with each term lasting one year and rotating likewise for each year thereafter. There were no votes in opposition from either the House or the Senate.

14 "State Juvenile Justice Profile: Louisiana," *supra*.

in their care.¹⁵ Representative Baldone, the author of the juvenile detention standards bill, is from Terrebonne Parish. Act 863 passed unanimously, and now a collaborative effort between the existing detention centers and the Juvenile Justice Project of Louisiana is on track for setting comprehensive standards for these facilities, based on best practices and feasibility.

The fiscal note indicates that it is not known how much this will cost in future years; but that the cost will be determinable once the needs of each facility have been studied and addressed by the Louisiana Juvenile Detention Association. The Committee on Juvenile Detention standards and licensing, comprising representatives from government posts and juvenile justice

organizations, has been created for this purpose. The Juvenile Justice Project of Louisiana, which supported the bill, heralded its passage as a "major, long-awaited step" in the reform of Louisiana's juvenile justice system. Along with establishing a plan and timeline for juvenile facilities, JJPL emphasized that the standards will "establish a baseline for all facilities to operate more

effectively, and provide oversight through compliance monitoring."¹⁶

Sex Offender Registration

Act 594, which was introduced by Representative Leger as House Bill 702, includes a small but important change with respect to sex offender registration. The Act amends Louisiana Children's Code Article 305, which addresses the juvenile court's continued-custody hearing, so that if a juvenile is charged with aggravated rape, he must be informed at the hearing that his conviction will cause him to be registered as a sex offender

15 Matthew Pleasant, "Seven guards indicted in detention-center sex case," *Houma Today*, March 18, 2010, Thursday; <http://www.houmatoday.com/article/20100318/ARTICLES/100319354> (accessed October 1, 2010).

16 "Juvenile Detention Standards Bill Hits Governor's Desk," *Juvenile Justice Project of Louisiana Newsletter*, Issue Number 4, <http://archive.constantcontact.com/fs090/1102126238129/archive/1103559746655.html> (accessed October 1, 2010).

Mandatory sentences emphasize our reliance on punishment, and children sentenced under these harsh statutes will be less likely to respond to rehabilitation.

for life.¹⁷

In the past, there was no requirement that a juvenile be informed of this fact. Because juveniles charged with this crime may choose to plead guilty instead of proceeding to trial, they need to be aware that the plea will be a kind of life sentence.

Trying Juveniles as Adults

A possible detrimental change from the 2010 Legislative Session is the amendment of Children's Code Article 857 (C)(1) and (2) to provide for instances where a juvenile "shall" be tried as an adult.¹⁸ Prior to this amendment, this provision used the permissive language "may." On first reading, this appears to yield the same result as prior law, yet it remains to be seen whether the mandatory language will strip discretion from juvenile judges in delinquency proceedings.

However, the general rule of noncriminal treatment of juvenile offenders means that adult criminal treatment is the exception and that juveniles are generally not to be tried as adults, except as provided in the constitution.¹⁹ Under certain circumstances, the prosecution could decide not to prosecute the case, release the juvenile and wait until he becomes an adult before re-arresting and charging him as an adult. Under the new version of the law, the juvenile would receive no protections from the juvenile system. The built-in protections with respect to sentencing remain, however: if he were not capable of being tried as an adult when he committed the crime, then he may not receive a sentence higher than the maximum he would have had in juvenile court, but the court's discretion and ability to render individualized juvenile dispositions may be diminished in this critical area of juvenile transfer.

Failed Legislation

As for the juvenile justice bills that failed to pass in the 2010 legislative session, it is worth noting that they both deal with sentencing, which suggests that their demise in the legislature reflects the highly political nature of juvenile dispositions, and a serious roadblock to

“Vitter Kids” do not have the incentive of early release to encourage them to commit to their own rehabilitation. No matter how well-behaved they are and no matter how much they grow, they have to serve their entire sentence.

embracing a rehabilitative model over a punitive one.

First, House Bill 826, introduced by Representative Rosalind Jones, would have allowed for parole eligibility in the famously strict “Vitter Kids” provision, La. Ch.C. art. 897.1 (it was introduced by Representative David Vitter in 1993, when he served in the Louisiana House of Representatives).

Under the present version of Article 897.1, juveniles adjudicated delinquent for certain offenses must serve the duration of their sentences in secure care until they reach the age of twenty-one. Vitter Kids, as Sarah Covert of the Juvenile Justice Project of Louisiana explained in an interview, “do not have the incentive of early release to encourage them to commit to their own rehabilitation. No matter how well-behaved they are and no matter how much they grow, they have to serve their entire sentence in a secure care facility.”

The bill would have amended Article 897.1 (A) and (B) of the Children's Code, removing the requirement that juveniles receiving the mandatory sentence of detention until age twenty-one be detained “without benefit of parole, probation, suspension of imposition or execution of sentence, or modification of sentence.” Senate Bill 494/ House Bill 1063 would have added the following section to Article 857 of the Children's Code, which outlines the circumstances under which a juvenile may be transferred to adult court:

Notwithstanding any other provision of law to the contrary, a child who has been transferred pursu-

¹⁷ Pursuant to Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950.

¹⁸ See also the amendment to the Louisiana Code of Criminal Procedure Article 876 providing for same.

¹⁹ See also the amendment to the Louisiana Code of Criminal Procedure Article 876 providing for same.

ant to this article or Article 305 and who has subsequently been convicted of an offense committed at the time the child was fifteen or sixteen years of age shall be eligible for parole consideration upon reaching the age of thirty-one years, unless eligible for parole consideration at an earlier date. This provision shall only apply to offenses occurring on or after July 1, 2010.

Currently, when a juvenile is fifteen or sixteen years old at the time he commits a crime and is subsequently transferred to adult court pursuant to Article 305,²⁰ there is no provision of law to provide for his parole eligibility. However, a fourteen-year-old who is transferred, tried and convicted as an adult “shall not be confined for such conviction beyond his thirty-first birthday.”²¹ House Bill 1063 would not have similarly provided for an outer limit on confinement, but at least it would have given a juvenile offender a chance to have his case reevaluated for the possibility of parole.

According to Sarah Covert, this bill, which passed through the Senate Judiciary B Committee without issue, went to the Senate floor the day after the United States Supreme Court issued its opinion in *Graham v. Florida*,²² which brought an end to juvenile sentences of life-without-parole for non-homicide offenses. As a result, Ms. Covert noted, the bill became controversial overnight. In an impassioned speech against the bill on the Senate floor, Senator Elbert Guillory suggested that a vote for the bill would essentially be a vote in favor of paroling murderers. Thus the bill received little support, with 10 votes in favor and 25 against.

Conclusion

The 2010 Louisiana Legislative Session exhibits some of the challenges that Louisiana faces as it progresses toward a rehabilitative juvenile justice system. Adult criminal treatment of juveniles will carry on if the prosecution’s ability to transfer juveniles to adult court continues to broaden. Mandatory sentences for “Vitter Kids” emphasize our reliance on punishment, and children sentenced under these harsh statutes will be

less likely to respond to rehabilitation.

However, the 2010 Session also highlights our progress. New laws with respect to the right to counsel for indigent defendants safeguard a juvenile offender’s rights at the trial level.

Most importantly, Louisiana’s secure detention facilities are now on a timeline for employing new licensing standards—a change that will hopefully mark a turning point in Louisiana’s commitment to the pursuit of the Missouri Model.

As for the sentencing bills that did not pass this term, the changes in the law that they attempted to advance will be necessary if Louisiana intends to continue building a progressive rehabilitation model.

The 2010 Legislative Session demonstrates that Louisiana’s juvenile system is being pulled in two directions by those who resist change and by those who seek it. What remains unclear is whether a truly rehabilitative juvenile justice system can emerge if these tensions persist.

About the Author

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²⁰ This transfer is automatic for juveniles ages 15 and older at the time of the offense. A fourteen-year-old, on the other hand, would only be transferred after a hearing as pronounced in Article 857 A.

²¹ Louisiana Children’s Code Article 857 B.

²² *Graham v. Florida*, 130 S. Ct. 2011 (2010).



Back to the Future: Louisiana's Open Primary Bill

By: Christopher Tyson

Since the historic election of Barak Obama, the nation's political divides have magnified as the political parties struggle to resolve a historic presidency and an ambitious policy agenda with an unprecedented backlash. In the midst of this political milieu, how elections are conducted has emerged as just as important – if not more – than who's elected. While it is perhaps an overstatement to suggest that Louisiana's recent return to an open primary electoral system for Federal elections was driven by national political trends, the switch to open primaries will affect how Louisianans elect Federal candidates in the 2012 election and beyond. Given the rise in political hyper partisanship and extremism on the national political scene, open primaries in Louisiana may limit the impact of these forces on outcomes in Federal elections.

In open primaries voters of any affiliation may vote for the slate of any party. Open primaries pit all candidates for an office on the same ballot, regardless of their party affiliation. If no one candidate secures more than 50% of the vote in an open primary election, the top two candidates face each other in a subsequent run-off election held thirty days later. Under this system it is possible to have a runoff between candidates of the same party. In closed primaries only the voters affiliated with a party may vote in its primary. In a closed primary the highest voted candidate in each party then proceeds to the runoff election. Blanket primaries (or “jungle primaries”) are those in which voters, regardless of affiliation, may choose the party primary in which they want to vote on an office-by-office basis. The blanket primary was struck down in 2001 by the Supreme Court in *California Democratic*

Party v. Jones.¹ A majority of states hold closed primaries for federal elections.

Since 1975 Louisiana has had open primaries for state elections and from 1978 to 2006 the state held open primaries for Federal elections. In 2006, former Louisiana State Senator Cleo Fields (D-BR) and State Representative Charlie Lancaster (R-Met) co-sponsored legislation to end open primaries in Federal elections out of a desire to increase minority voting impact in closed Democratic primaries and conservative voting impact in closed Republican primaries. Since 2006 Louisiana's Federal elections were decided through the closed primary process, with registered Democrats and Independents allowed to vote in the Democratic Primary and only registered Republicans allowed to vote in the Republican Primary. In the 2010 Regular Legislative Session the passage of House Bill 292 reversed course and returned Louisiana to the open primary system for 2011.

Critics of open primaries argue that since Federal law requires that Federal elections be held on the same day in November, runoffs cannot be held until December, sending Louisiana's Federal lawmakers to Washington, DC too late in the year and long after choice committees and preferable office space have been assigned. Additionally, critics of the change argued that switching to a new system would confuse voters and make it harder for minority candidates to seek elective office, particularly given what some view to be an increasingly ideologically polarized electorate. As a sign of the times, however, fiscal concerns won out - Representative Hunter Greene (R-BR) argued that switching back to open primaries will save Louisiana taxpayers \$6.5 million every two years.²

Louisiana's closed primary system has arguably led to several effects. First, it has likely prompted conservative voters to change their voter registration from

¹ 530 U.S. 567 (2000).

² Jeremy Alford, Primaries Could Hold Surprises for Voters, HoumaToday.com, 7/17/10.

Switching back to open primaries will save Louisiana taxpayers \$6.5 million every two years.

“Democrat” to “Republican.” This is significant because like many southern states, Louisiana saw many of its white voters support Republican candidates in national elections after President Johnson's support for the 1960s civil rights legislation. Upon signing the historic Civil Rights Act of 1965 on July 2, 1964, legend has it that as President Johnson put down his pen he told an aide, referring to the Democratic Party, “We have lost the South for a generation.”³ Soon thereafter there emerged what would come to be understood as the Nixon Southern Strategy, a political strategy that appealed to suburban whites through themes of “social conservatism”

that were distinctly in opposition to the social upheavals of the times, particularly civil rights and racial integration.⁴ This strategy, in part, led to Republican victories in national elections as the south - a region that was Democratic from the Civil War through to the 1960s - began shifting Republican.⁵ Louisiana lagged in this trend, but when party primaries became closed in 2006, many Republican-identified registered Democrats - those who never formally changed their party affiliation - likely realized that they had to change party affiliation in order to vote in the closed Republican Party primaries. Louisiana's closed federal primary experiment, therefore, may have accelerated and codified political trends that began in the 1970's.

Second, the closed primary system produced candidates that appealed to each party's “base.” Political partisans believe such candidates energize the party faithful and the party system overall. Given that the state's Republican Party primary is restricted to registered Republicans only, candidates could conceivably “run to the right” in the primary campaign to appeal to the party's base voters. Since the Democratic Party

³ See, e.g., Nicholas Dawidoff, Race in the South in the Age of Obama, New York Times Magazine, 2/25/10, p. 30.

⁴ For a discussion on Nixon's Southern Strategy, see, e.g., Christopher Tyson, At the Intersection of Race and History: The Unique Relationship Between the Davis Intent Requirement and the Crack Laws, 50 Howard L.J. 345, 368-369 (Winter 2007); Id. at 368 n. 82.

⁵ For a more in-depth discussion of the racial dynamics in Southern politics in the 1950's and 1960's, see Wayne Parent, Inside the Carnival: Unmasking Louisiana Politics, p. 47-51.

primary allowed non-party voters to vote in addition to registered Democrats, it is arguable that Democratic candidates had less incentive to “run to the left” in the primary campaign. In either case, the victors in each party primary would likely have to moderate their campaign messages to appeal to independent and swing voters in the general campaign cycle.

The ability to appeal to the party faithful and message to the core of the party platform is another dynamic of the closed primary system, and in the increasingly partisan national political climate of the last decade, it is understandable that the Louisiana legislature was willing to depart from longstanding political conventional wisdom on primary campaigns. Therefore it can be argued that closed primaries produce more polarized candidates and campaigns.

Ultimately the switch to open primaries is a minor political development considering the potential political changes Louisiana will face once the 2010 census is complete. Louisiana is projected to lose a congressional seat, and state legislative districts will be redrawn to address south Louisiana’s shifting post-Katrina population issues. Given that the open primary law will apply only to Federal elections, the potential loss of a Congressional seat and the reordering of the state’s Congressional map are considerable. Add to that the hyper-partisan national political climate, the Voting Rights Act compliance issues related to Louisiana’s relatively high minority population and waning Democratic Party support in the state, it is easy to see how the 2012 federal elections are likely to produce attention-getting results in Louisiana. Navigating a new old primary system should be the least of voters’ concerns.

About the Author

Christopher Tyson is an Assistant Professor of Law at LSU's Paul M. Hebert Law Center. He teaches and writes in the areas of local government law, real estate and urban development. He has also published on topics such as race and politics. He is a graduate of Howard University, the Harvard Kennedy School and the Georgetown University Law Center.

ABOUT LOUISIANA PROGRESS

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IN-DEPTH ON EDUCATION

No single issue will define the 2010 legislative session--and potentially the next several sessions--as emphatically as higher education. Faced with a budget shortfall caused in significant part by steep tax cuts enacted during flush years, the legislature must take a hard look at the higher education system in Louisiana and make difficult choices about what is best for the state and its young people. Slashing education to address the state's current revenue and spending problems will badly disserve the state. There is a need for strategic leadership to design and implement a long term solution that achieves the goals of financial sustainability while strengthening our state's workforce and ensuring that our young people are competitive to support the long-term economic development of Louisiana.

Louisiana Progress is keeping a close watch on this issue and this in-depth look is part of our effort to provide analysis of the problem along with innovative, comprehensive and workable solutions. This section consists of three articles, each addressing a facet of the issue. William Broussard's article, "The LA GRAD Act: Institutional Autonomy and Violation of the Public Trust" sets the stage by providing a discussion of the long-term impact the GRAD Act will have on higher education in Louisiana and on the state's workforce. Any serious discussion of higher education reform must start with a hard look at revenue sources and how the state chooses to spend its money. To that end, the Louisiana Budget Project Report reveals how much Louisiana is spending on tax breaks for special interest groups and the wealthy at the expense of, among things, higher education, and recommends areas where the state can reclaim some of this lost revenue. Finally, The Council for a Better Louisiana piece summarizes the challenges facing the higher education system in Louisiana and lays out a series of recommendations for improvement.

HB 1171: The LA GRAD Act Institutional Autonomy & Violation of Public Trust

By: William Broussard

At the close of the 2010 legislative session, Governor Bobby Jindal signed HB 1171, the "Louisiana Granting Resources and Autonomy for Diplomas Act," (LA GRAD Act) into law after its overwhelming passage in the House by an 87-13 vote.¹

The legislation emerged from the eponymous "Tucker Commission," the more common name for the Louisiana Postsecondary Education Review Commission (LAPEREC, <http://www.laperc.org/>), and was sponsored by House Speaker Jim Tucker (R-Terrytown).² It is part of the second wave of significant revisions to higher education policy and fiscal revisions ushered in by Governor Jindal. The first wave, of course, is a three-year period of budget retractions beginning in 2009 that will reduce levels of state spending by hundreds of millions of dollars, levels not seen since the late 1990s.

Governor Jindal claims the legislation "enacts performance expectations and incentives at colleges and universities in order to increase student performance, to better meet state and regional needs and improve institutions' overall competitiveness, effectiveness, and

1 Jordan Blum, "House OKs Bills to Increase Tuition 10%," *The Advocate*, June 4, 2010, 1A, accessed September 19, 2010, <http://www.2theadvocate.com/news/95589434.html>; Office of the Governor, State of Louisiana; "Governor Signs GRAD Act Into Law," June 30, 2010, press release, accessed September 19, 2010, <http://www.gov.state.la.us/index.cfm?md=newsroom&tmp=detail&catID=2&articleID=2299>.

2 Jordan Blum, "Tucker Commission Finishes Up," *The Advocate Capitol News Bureau*, February 5, 2010 (6:45 p.m.), <http://www.2theadvocate.com/blogs/politicsblog/83685772.html>; Marsha Shuler, "Groups Huddle to Support GRAD Act," *The Advocate*, June 3, 2010, 6A, accessed September 19, 2010, <http://www.2theadvocate.com/news/95480644.html>; Office of the Governor, State of Louisiana, "Governor Jindal Announces LA GRAD Act," February 23, 2010, press release, accessed September 19, 2010, <http://www.gov.louisiana.gov/index.cfm?md=newsroom&tmp=detail&articleID=1915>.

efficiency,” by raising tuition levels to rates that are more comparable to Southern regional peers. More importantly, Governor Jindal claims that with this new legislation, “we can better prepare our students to compete for jobs in the 21st century.”³ For Governor Jindal, the passage of this bill does more than help balance the state’s budget deficit, it ensures the state’s future workforce development.

HB 1171 will increase institutional autonomy and the university system and campus leaders welcome the passage. The new legislation allows institutions of higher education to contract for the authority to raise tuition incrementally up to the Southern Regional standard without the rigmarole of a 2/3 vote from the legislature. In exchange for allowing institutions to secure more funding to balance their budgets, Governor Jindal gets institutional commitments to raise admission standards and graduation rates.⁴

Everyone wins in this scenario. Right? Perhaps the answer to that question is embedded within a couple of inconsistent remarks used to promote the passage of the legislation and the resistance of the 13 House members who fought its passage.

Governor Jindal claims that the LA GRAD Act will enable Louisiana’s students to prepare themselves to compete for jobs in the 21st century, but it stands to reason that significantly fewer students will be ready to enter that workforce in the future. Those students, in the present, are faced with the decision to either pay more for their college educations or save money by going to community colleges that may not credential them sufficiently to enter this new workforce. Rep. Tucker, in response to Rep. Robert Johnson’s (D-Marksville) claim that this legislation puts the burden “on the

backs ... of our most vulnerable constituents,” claims that prospective students can always go to “cheaper community colleges.”⁵

In fact, an intended consequence, according to Governor Jindal in his September 16, 2009 letter to LAPEREC, is to increase community college enrollment, reducing the number of college students who leave college in debt, without credentials.⁶ While more and more students will be forced to increase borrowing by 10% annually because of the LA GRAD Act (research by the Southern Regional Education Board shows that median borrowing among first-year students is as much as \$4,000 annually⁷) or go to cheaper community colleges, one wonders how fewer four-year degree holding college graduates will become the 21st century workforce the governor envisions.

*We are exchanging
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We face the imminent prospect of students graduating from four-year institutions with more debt and having to consider leaving the state for higher paying jobs, or not being fully credentialed for high paying jobs in-state. We risk mortgaging the state’s future for short-term political gain in Baton Rouge, or as “ULY-ankee,” a blogger at DailyKos.

com puts it, we are exchanging an “educated” workforce for a “trained” one, and one trained in very limited areas that do not allow our state to move forward economically.⁸

With regard to the newfound institutional autonomy

3 Jordan Blum, “LA Grad Act Bill Passes House,” The Advocate Capitol News Bureau, June 3, 2010 (6:20 p.m. updated 7:50 p.m.), <http://www.theadvocate.com/blogs/politicsblog/95575484.html>.

4 Bobby Jindal, Letter to the Postsecondary Education Review Commission, September 16, 2009, accessed September 19, 2010, <http://www.gov.state.la.us/assets/docs/PERC.pdf>.

5 Southern Regional Education Board, “First-Time Students’ Participation in Student Financial Aid and Loan Programs at Public Four-Year Colleges and Universities 2007-2008, spreadsheet, accessed September 19, 2010, http://www.sreb.org/page/1358/data_library_higher_ed_student_financial_aid.html.

6 Ulyankee, “LA Grad Act (HB 1171) – Louisiana’s Higher Edgedgedon?” Daily Kos, June 12, 2010 (3:21 a.m.), <http://www.dailykos.com/storyonly/2010/6/12/875226/-LA-Grad-Act-%28HB-1171%29Louisianas-Higher-Edgedgedon>.

3 Office of the Governor, “Governor Signs GRAD Act Into Law.”

4 Jordan Blum, “Colleges to Raise Tuition,” The Advocate, July 4, 2010, 1A, accessed September 19, 2010, <http://www.theadvocate.com/news/97751419.html?index=1&c=y>.

to raise tuition, university presidents unequivocally supported the bill's passage, but budget crises across the state's public institutions precipitated their eagerness. The provision that institutions entering into this agreement raise admissions standards and graduation rates in order to raise tuition will not balance the severity of the cuts. However, universities that fire staff, cut services left and right, and eliminate even high performing faculty and unique programs are desperate to secure revenue to stave off more debilitating cuts.

As Sen. Rick Gallot (D-Ruston) and Rep. Sam Jones (D-Franklin) have noted, institutions may not be paid off as well as they hope, particularly if enrollments drop and only the state's most privileged families can afford to send their children to college.⁹

The potential certainly presents itself that fewer four-year graduates, comprised of a more privileged socioeconomic class of students, and a glut of associate's degree holders will be our new workforce. This certainly limits the kinds of industry and the profiles of businesses that will be attracted to relocate to Louisiana and our state's potential to retain those that already have. The scenario university presidents are presented with is in fact a dire one, and in order to remain solvent, campuses have to sacrifice their long-term missions to serve students and communities in order to survive in the short term.

Monica Pini, of the Universidad de Buenos Aires, has studied the emergence of privatization in American higher education (think University of Phoenix, and the like), and she claims this represents a widespread privatization of the public sphere. In her paper "Moving public schools toward for-profit management: Privatizing the public sphere," she finds that for-profit institutions' talking points revolve around promises of "competitiveness, efficiency, and consumer choice, but may also ignore the concerns of equity, citizenship, and solidarity and the (corporate need) to remain profitable."¹⁰

⁹ Blum, "LA Grad Act Bill Passes House."

¹⁰ Pini, Monica, "Moving Public Schools Toward For-Profit Management: Privatizing the Public Sphere," (paper presented at the American Educational Research Association National Conference, Seattle, Washington, April 10-14, 2001), accessed September 19, 2010, <http://www.eric.ed.gov/PDFS/ED453603.pdf>.

In other words, when institutions of higher learning choose to, or in the case of Louisiana's four-year institutions, are forced to allow fiscal concerns to trump institutional commitments to service and education, this represents a violation of the public trust. Citizens depend upon higher education to serve the greater good. Students, faculty, and staff obviously depend upon the university or education and preparation, for salaries, and for a sense of beneficence.

Communities depend on universities for the resources they produce and provide, including cultural and entertainment options as well as the entrepreneurship and skilled labor of the workforce they produce, not to mention regional economic impact. An underfunded university underserves all members of the citizenry, and a university that is forced to do whatever it can to survive fiscally must inevitably pervert its mission to serve citizens.

As universities continue to raise tuition over the coming years in order to keep their doors open, the buck is passed along to prospective students and their families to cover costs that the state once assumed as an investment in its own prosperity. All the while, these students will face the choice of receiving a potentially lower quality education or working towards a less prestigious credential that opens fewer professional doors to them.

The better question to ask in this scenario is who is supposed to win? Because the State of Louisiana and its citizens seeking higher education appear to have the odds stacked against them as they try to compete.

About the Author

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Louisiana's Hidden State Budget

By the Louisiana Budget Project

Louisiana will spend approximately \$8 billion in state revenues next fiscal year through the state budget. The state also will spend another \$7 billion-plus through what might be called the hidden budget.

What is this hidden budget? It's the total of more than 440 separate pieces of legislation, each of which exempts someone or something from some form of taxation. While the regular state budget is made up of money the state takes in and then sends back out, the hidden budget is money the state decides to forego in the first place. This form of spending is called "tax expenditures," and in Louisiana it has grown dramatically in recent years, even as regular state revenue has declined.

To more efficiently manage its finances and build a stronger future, Louisiana needs to shed more light on its hidden, tax-side spending.

Why is tax-side spending hidden, and growing?

The regular state budget is proposed each year by the Governor and adopted by legislators who get the chance to scrutinize and debate how every penny is spent. The public, too, has the opportunity to comment on the state budget, and people can go online any time and look up any item in the budget at the Legislature's website, www.legis.state.la.us.

But the hidden budget works differently. After a specific tax break is approved, the money flows freely year after year—with little chance that this spending by the state will ever be evaluated. If the cost of a particular hidden budget item soars beyond original estimates, it's likely no one will even notice. In the hidden budget, there's no need to set priorities or weigh the value of state spending on one thing compared to another.

And once spending in the hidden budget starts, it's almost impossible to stop. That's because, unlike the regular state budget, the hidden budget can't be reduced by even a penny unless a full two-thirds of legislators vote to save the money. That's an unrealistically high bar.

Today, with the state in a fiscal crisis, shedding light on Louisiana's hidden budget is particularly important. As the state is preparing to reduce important services

that Louisianans rely on, planning to lay off employees, considering increases in college tuition, and proposing reductions in access to health care in order to make up for declining revenues the hidden budget remains largely untouched and immune to any reductions.

How much is the state spending through the tax code?

In fiscal year 2011, Louisiana projects spending \$7 billion through tax expenditures, nearly as much as it will take in from revenue. Since tax expenditures are largely ignored in the regular budget process, this means the legislative policy debate encompasses only about half of the state's total spending.

After a tax break is approved, the money flows freely year after year—with little chance that this spending by the state will ever be evaluated.

And, spending through the tax code is growing. It's projected that revenue lost to tax expenditures from 2006 through 2011 will have increased 28 percent – to \$7.1 billion from \$5.6 billion. State revenue, by contrast, is expected to decrease 3 percent.

Are there examples of tax expenditures that deserve more attention?

Some spending from the hidden budget makes sense. For example, Louisiana exempts medicine and groceries from the sales tax. Most Louisianans probably would agree that's the right thing to do, even if it means the state gives up potential revenue. Louisiana also exempts residential utilities, including electricity, natural gas, and water, from the sales tax. But with 441 tax breaks on the books, and no systematic review process in place, there's little doubt that some of tax-side spending is overblown, outdated, or otherwise wasteful. If tax-side spending were prioritized alongside regular budget items, it is unlikely that all of the existing tax breaks could be justified.

What's wrong with Louisiana's annual report on tax-side spending?

Louisiana has taken an important initial step to track tax-side spending. Each year, by statute, the Louisiana Department of Revenue must produce a "tax exemption budget" that estimates the cost of each tax expenditure and assesses its effectiveness. The tax exemption budget provides useful information, but not enough to get a handle on the revenue being spent through the tax code. For example, even though the law requires it, the Department of Revenue does not provide estimates of the cost of many tax expenditures. The Department says in its tax exemption budget that it lacks the data to estimate these costs accurately, but other states have found ways to make reasonable calculations of lost revenue.¹ Because Louisiana fails to employ these other methods, its tax exemption budget leaves legislators and the public with no idea how much certain tax expenditures are costing the state.

¹ For example, Louisiana's tax exemption budget does not include a cost estimate for the corporate income tax exemption for credit unions citing the reason as "No Reporting Requirement". However, Oregon's Tax Expenditure Report includes a cost estimate for this same exemption.

Examples of Tax-Side Spending that Deserve More Attention:

To help energy companies make profits

Louisiana provides a two-year moratorium on severance taxes to encourage the drilling of horizontal oil and natural gas wells. This tax break was enacted in 1994, when the oil and gas industry was economically weaker due to lower product prices and horizontal drilling was in its infancy. Neither is true today. In the Haynesville Shale in north Louisiana, projected to contain one of the largest accumulations of natural gas ever discovered in the U.S., energy companies don't have to pay severance taxes for two years on wells they drill. But companies don't need additional incentive to explore and mine in the Haynesville Shale, given the enormous profit potential. In fiscal year 2011, tax exemptions on severance taxes are projected to cost Louisiana \$189 million. Drilling in the Haynesville Shale could drive this cost considerably higher when fully developed. That's money that's not going to our depleted university or health care systems.

To increase the incomes of the wealthy

In 2007 and 2008, the state rolled back key portions of the 2002 Stelly Plan that resulted in the largest income tax cuts in the state's history and left in effect the sales tax exemptions passed in the original bill. In 2007, the Legislature began a phased-in reinstatement of the state deduction for federal itemized deductions, which effectively lowered income taxes for those who itemize their deductions – primarily upper-income taxpayers. This became fully effective in 2009. In the 2008 legislative session, the income tax-bracket changes were repealed, so the top 6-percent income tax rate once again applied only to income over \$100,000 for joint filers, not \$50,000 as had been the case. The total projected cost of these tax cuts by fiscal year 2012 is \$2.2 billion, according to estimates by the nonpartisan state Legislative Fiscal Office.

In addition, the Department's assessments of the effectiveness of tax expenditures lack the depth to inform meaningful legislative decisions or public debate. The law requires the Department to assess who benefits from each tax expenditure and whether each tax expenditure:

1. Has been successful in meeting the purpose for which it was enacted.
2. Is the most fiscally effective means of achieving its purpose.
3. Has unintended or inadvertent effects, including whether it conflicts with other state laws or regulations.
4. Simplifies or complicates the state tax statutes.

The tax exemption budget provides very minimal, if any, information in answer to these statutory concerns. The budget provides no assessment of the success of each expenditure, no details about the beneficiaries of expenditures (such as a break-out of beneficiaries by income category), no assessment of unintended effects, and no description of whether an expenditure simplifies or complicates state statutes. The budget's assessment of whether a particular expenditure is the most fiscally effective means of achieving its purpose is so minimal as to be useless. In every case, the budget simply repeats the line, "The purpose of this [tax expenditure] is achieved in a fiscally effective manner."

What should Louisiana do?

At a time of severe budget crisis, Louisiana can no longer afford to put nearly half of its spending off limits from public scrutiny. To let the public into the debate, the state needs to do three things.

- **Improve the tax exemption budget report.** The report should follow the requirements of the law. It must estimate the cost of all (or nearly all) tax expenditures and assess each expenditure based on a variety of criteria.
- **Incorporate an evaluation of tax-side spending into the regular budget process.** Determining

precisely how to do this will require legislative and public debate. One step would be to consider increasing the number of tax expenditures that include "sunsets" -- end-dates that force the legislature to choose whether or not to extend a particular expenditure in its current form. Only 20 percent of the tax expenditures Louisiana has created in the past 10 years include a sunset.

- **Reduce the unrealistically high bar for repealing or reducing tax expenditures.** Legislators may cut spending on items in the regular budget by majority vote, but it takes a two-thirds vote of both houses to repeal or reduce a spending item on the tax-side. This disparity makes it difficult for legislators to prioritize state spending. It allows a minority of legislators to continue allocating scarce state resources to a low-priority or even obsolete tax expenditure, at the expense of more important state services.

Every penny Louisiana spends should have a purpose; and every purpose should be scrutinized by the public and elected officials. The needs of the state are too great to allow billions of dollars a year to be spent without any evaluation of whether it is doing the job intended or taking away from a higher priority need.

About the Author

The Louisiana Budget Project provides independent, nonpartisan research and analysis of Louisiana fiscal issues and their impact on low and moderate income residents.

LBP was formed in 2006 as an initiative of the Louisiana Association of Nonprofit Organizations, and is part of a network of over 30 State Fiscal Analysis Initiatives coordinated by the Center of Budget and Policy Priorities.

Learn more: <http://www.labudget.org>

Recommendations to Move Higher Education Forward

From the Council for a Better Louisiana

Since the state instituted minimum admission standards, TOPS scholarships, and the community college system, post-secondary education in Louisiana has shown steady improvement in several areas such as the number of degrees awarded, freshmen with higher ACT scores and reductions in the number of students taking remedial courses at four-year institutions.

Other positive efforts in recent years include faculty salary increases and targeted funding to high-quality research and development centers. In addition, in 2008, for the first time ever, LSU – the state’s only Doctoral 1 Research University – entered the top tier ranking in U.S. News & World Report’s annual review. This is a major step forward for all of our state.

However, particularly in the light of recent budget cuts, higher education in Louisiana faces several systemic and structural issues that CABL believes must be addressed to make post-secondary education more efficient and effective and produce the workforce we need for the future.

- Graduation rates remain low compared to other states covered by the Southern Regional Education Board (SREB).** Louisiana’s most recent six-year graduation rate is 37% compared to 53% as the average for all SREB states. (The Louisiana Board of Regents also tracks transfers which brings the state’s graduation rate up to 42% but for comparison purposes the SREB graduation rate would also be higher if transfers are taken into account). In Louisiana, one institution has a graduation rate of 66%, one has a rate of 52%, one has a rate of 44%, six are in the 30% range, three are in the 20% range and one has a graduation rate of 6%.
- There is an imbalance of enrollment between two- and four-year schools in Louisiana compared to other SREB states.** In Louisiana 72% of students in post-secondary education are enrolled in four-year institutions and 28% in two-year schools. The average in other SREB states is 55% in four-year schools and 45% in two year schools. This is one of the reasons Louisiana’s graduation rates are comparatively low compared to other states. In addition, it costs both the state and students more money to enroll in four-year schools and that cost is magnified by the fact that a higher percentage of students in Louisiana are not completing their studies at four-year schools with degrees. With the continued growth of our community colleges this imbalance should change, but Louisiana still has far to go.
- Louisiana awards a relatively low number of Associate Degrees compared with the nation.** Many of the good jobs of the future will not require a four-year Baccalaureate Degree but will require some level of advanced training or education beyond high school. Nationwide 7.5% of the population age 25 or older has earned Associate Degrees while the number is less than 5% in Louisiana.
- Louisiana’s research universities, particularly our flagship institution, are not nationally competitive with their peers in terms of financial resources.** LSU is Louisiana’s only Doctoral 1 Research University, but its total funding is significantly below the top institutions in the region. Total funding per student is 49% higher at the University of Texas at Austin, 37% higher at

the University of North Carolina, and 27% higher at the University of Georgia. If we aspire to having a top research institution in our state, it must have financial resources on par with top institutions in other states.

- **Tuition rates are low in Louisiana compared to SREB states which places more of a burden on state government and brings overall support for higher education down.** When you look at state funding for higher education before the recent budget cuts, Louisiana fared fairly well – ranking sixth out of 16 SREB states. However, when you consider rates for tuition and fees, Louisiana ranks 14th. While lower tuition and fees might be a good thing on the one hand, the other reality is that it drops overall funding for higher education in Louisiana significantly – all the way down to number 12 in the SREB. If tuition rates do not rise to regional averages the state burden in support of higher education is effectively greater than in most other states while overall support for the institutions is lower and our universities become less competitive.

Adding to all of this are the major cuts to post-secondary education which have already reduced funding by more than \$250 million or approximately 17%. Unfortunately, the cuts aren't over and the situation is only expected to worsen. More cuts are expected for the 2010-2011 fiscal year followed by the loss of federal stimulus dollars for the 2012 budget. Depending on how those numbers work out, a total budget cut to higher education approaching 40% is not an unlikely

A total budget cut to higher education approaching 40% is not an unlikely scenario and would bring state funding to higher education down to levels not seen in more than a decade.

scenario and would bring state funding to higher education down to levels not seen in more than a decade. CABL believes cuts at this level will have a devastating effect on post-secondary education in Louisiana at a time when we should be working to increase education attainment levels in our state and grow our skilled workforce. Nevertheless, it appears that, at the very least, cuts approaching this magnitude will occur. Given that, CABL believes a number of major policy changes must be made in post-secondary education to better position it for the future.

To that end, we offer the following recommendations in order to achieve the goals of high-quality schools, greater economic vitality and growth, establishment of priorities and efficiencies with public dollars, and increasing the number of our citizens who are educated and trained for jobs. CABL believes these recommendations are interconnected and should be enacted with a sense of urgency.

10 Reform Recommendations to Move Higher Education Forward

1. Establish higher admissions standards and/or enrollment caps at all four-year institutions to sharpen focus on mission, improve graduation rates and gain funding efficiencies.
2. Reduce competition and duplication among institutions considering both regional and statewide needs. Consideration should also be given to such options as merging administrations, changing missions, merging campuses and utilizing technology for distance learning to expand educational offerings.
3. Place all two-year schools in the Louisiana Community & Technical College System. Provide funding to support growth in community and technical colleges, accompanied by increased and better defined accountability standards.
4. Reduce the number of existing Ph.D. and graduate programs in regional state colleges and refocus their missions on providing strong undergraduate degrees.
5. Minimize remedial courses and Associate Degrees

in regional state colleges and place them in community and technical colleges. If exceptions are made for high-need programs (such as nursing), students should be charged two-year college tuition fees, instead of four-year tuition rates, and all institutions offering those courses should be funded at the two-year rates for those programs.

6. Limit the number of true, high-quality, R&D programs and increase their funding. This should be based on the relatively few institutions that have demonstrated excellence in their programs and success in attracting external research dollars.
7. As budget cuts are enacted, ensure that they are strategic and targeted rather than the across-the-board cuts, that are generally the norm. Priorities should be based on excellence, performance, and job market needs.
8. Authorize the Board of Regents in conjunction with higher education management boards to set rates for tuition and fees without legislative approval.
9. In light of the ongoing cuts to higher education, the TOPS program should be thoroughly reviewed and consideration should be given to increasing academic standards for TOPS, capping the TOPS program, increasing access to TOPS Tech awards and providing additional need-based funding.
10. Implement and fund a flagship agenda and allow LSU to assess a special “flagship fee” to ensure the university maintains national peer status. Louisiana should commit to offering its citizens one preeminent, public, Doctoral 1 university within the state to provide educational opportunity and support a modern diverse economy. Additional funds should come with high expectations for performance competitive with peer research universities.

CABL recognizes that these recommendations represent major shifts in policy that will and should have significant impacts on post-secondary education. Enacting and implementing them will require strong leadership at all levels. CABL believes one impediment to achieving that is the lack of clearly defined authority for the Board of Regents.

Over the years, seemingly conflicting language in state law has made it difficult for the Regents to adopt and implement significant policy and budget changes in an efficient and financially sound manner. Because of this, many of the changes in higher education in Louisiana have been only incrementally enacted over the last two decades while other states have forged ahead and reaped economic benefits not seen to the same degree in our state.

For that reason CABL believes that during the upcoming legislative session lawmakers should adopt whatever changes in law are needed to clearly define the authority and legal responsibilities as they relate to the Board of Regents and the various the system management boards.

Specifically, the Legislature should clearly and specifically give the Board of Regents control over statewide policies such as admission standards, mission and roles of institutions, the master plan, budget, funding formula, and graduate and undergraduate programs. This change would leave the overall structure, including management systems and boards, intact. However, it should make clear who is responsible for higher education improvement in the state and better define lines of accountability.

In closing, CABL believes that the recommendations offered in this report present a path forward for post-secondary education in Louisiana – one that that will lead to improved institutional performance, efficient use of public dollars and a system that can maintain quality in priority areas even in times of severe financial distress.

About the Author

The Council for a Better Louisiana (CABL) is a nonpartisan statewide organization working in the public interest to focus attention on issues most important to moving Louisiana forward. CABL's record is one of committed involvement, advancing positive ideas in the public arena and the corridors of government.

Learn more: <http://www.cabl.org>

BP's Blow-Up & DC's Debacle

Energy Policy-Making the Wrong Way

Abstract

The BP oil spill was not only a technological failure, but one that demonstrated the ineptitude of federal crisis management. The result is likely to be a misplaced focus on curtailing deepwater drilling and making a permitting process increasingly cumbersome. The net result will not be increased safety on oil rigs or ecological protection in those waters adjacent to deepwater drilling, nor is it likely to improve energy policy and create 'greener' jobs. This paper will outline what has happened so far and what should happen to reduce the risks of another oil rig tragedy and a further governance calamity.

By John W. Sutherlin, Ph.D.

Drilling for oil in the Outer Continental Shelf (OCS) is a risky and often dangerous business that many states do not want taking place off their coast. Although there have been fewer and fewer oil spills over the past forty years and a 46% drop in spills in the past decade, there will always remain some risk. Previous spills were quickly politicized, a flurry of new legislation passed and watch-dogs groups formed along with general consternation inevitably appearing.

For example, the Exxon-Valdez Accident in 1989, *inter alia*, resulted in the Oil Pollution Act of 1990, or OPA. The new legislation did address two major issues:

- improved the nation's ability to prevent and respond to oil spills by expanding the federal government's jurisdiction, and
- created the national Oil Spill Liability Trust Fund.

With regard to the former, OPA provided for a National Oil and Hazardous Substances Pollution Contingency Plan requiring the federal government to "direct all public and private response efforts" (OPA). OPA was supposed to reduce the risk and improve the ability of the federal government (working with private companies and state officials) to quickly clean-up any spills.

Yet, the primary agencies for planning, permitting and leasing (e.g., Minerals Management Service, now the

Bureau of Ocean Energy Management, Regulation and Enforcement), and inspecting and assisting with any clean-up (e.g. the Environmental Protection Agency and the National Oceanic and Atmospheric Administration) took few preventive measures after OPA. For example, MMS spent less than a tenth of one cent for every dollar it collected from royalties researching research designates that better ways to contain and clean-up spills (Nalder). MMS was careless in the manner in which it granted permits for exploration in the Gulf of Mexico (GOM) and may have had a systematic disregard for concerns raised by biologists and engineers vis-à-vis safety and potential spills (Urbina). In other words, there was a perfect storm fermenting below the Gulf waters and a nightmare of governance incompetence above the waves.

Scientists had warned of varying complicating factors for addressing spills in the GOM for years. Between June and November is the hurricane season for the GOM. Following Hurricanes Ivan, Katrina and Rita, extreme weather was known to cause extensive facilities and pipeline damage (Kaiser and Pulsipher). Researchers discovered that the GOM may be more sensitive to seismic and dredging activity than once believed (Drucker et al). The GOM has long been a viable source of seafood, tourism and energy. Yet, the region remains vulnerable due to 'dead zones' caused by eutrophication or increased hypoxic waters caused by fertilizers, pesticides and other oxygen depleting

chemicals in the waters (Rabalais). Some scientists also called for a better way to manage these resources (Stranberg) or to even wean ourselves from further exploitation of resources by reducing reliance upon petroleum, especially from the transportation sector (Morrow).

This essay will describe the explosion and subsequent ecological impact of millions of gallons of oil in an already strained ecosystem. In addition, it will detail how the federal government exacerbated this issue by providing little strategic guidance. Also, there will be some attention paid to providing alternatives to avoid such a calamity when the next spill, fire or explosion takes place.

BP's Blow-Up

On April 20, 2010, the Transocean drilling rig Deepwater Horizon, which was licensed by British Petroleum (BP), exploded and caught fire in the GOM. Eleven people were killed and seventeen people were injured. Within a couple of days, the rig would sink and a five-mile long oil slick would begin to replace it. The slick would not have been there had the blowout preventer activated. While the events described are tragic and the loss of human life terrible, this incident has been compounded by incompetence and arrogance by the federal government and has increased the insecurity of oil producing states like Louisiana. To make matters worse, it appears unlikely that the energy governance structure (i.e., planning, leasing, permitting, regulating) will make noteworthy improvements. Further, White House pandering could result in considerable job loss and decreased revenue for oil producing states, especially Louisiana.

The real debacle began years before the blow-up. The oil rig was built over a three-year period by Hyundai Heavy Industries Shipyard in Ulsan, South Korea. Clearly, improved inspections and follow-up inspections could have reduced the likelihood of this blow-up and loss of life.

In trying to cast itself as a new, greener company, BP began a public relations campaign almost a decade ago. Instead of British Petroleum, BP would now stand for 'beyond petroleum.' In fact, UK consumers considered BP one of the top 'green companies' in the world



DeepWater Horizon exploded on April 20, 2010

(DuBois). Yet, when one left Britain, it was another matter. In 2000 and 2005, BP was ranked as one of the "ten worst companies in the world" in part for its abysmal occupational safety and dreadful environmental records (Mokhiber and Weissman). On March 15, 2005, BP's refinery in Texas City, Texas exploded killing 15 workers and injuring more than 170. This was the third accident in the previous four years at this facility. But to simply pile on BP misses the point. The industry itself and those regulating it need an overhaul.

During May 2010, BP managed to try everything from 'robots' to 'junk shots' to 'top hats' in an effort to stop or slow-down the underwater gusher. Also, the GOM became a manifestation of the loony as everyone from James Cameron to Kevin Costner came to Louisiana to 'pitch in and help.' But, it was BP Chief Executive Tony Hayward's comments and lack of action that doomed him and threatened to permanently tarnish the BP brand.

BP stonewalled the press and provided grossly misleading accounts of how much oil was actually spilling into the GOM. By the middle of June, BP found itself being threatened from the White House and called upon by the new dweller at 10 Downing Street to answer questions. Hayward became the public face of BP and made public relations blunders whenever he could (Webb). By the end of July, Hayward had been replaced by Mississippi native Bob Dudley. The result was a \$20 billion 'down payment' to compensate the victims (still not clearly defined). Still, BP was not the

only one making grave errors.

DC's Debacle

In a manner that could be described as both arrogant and ignorant, White House Press Secretary Robert Gibbs asserted "I don't honestly think it opens up a whole new series of questions, because, you know, in all honesty I doubt this is the first accident that has happened and I doubt it will be the last" (AP). This rather glib comment came three days after the BP explosion. Within a week, the Obama administration had ordered a halt to new drilling, safety inspections for all active drilling rigs and production platforms in the GOM and had ended all talk of this incident being merely another average day. This White House had gone back to pre-March 31st rhetoric.

Note that on March 31, 2010, just three weeks before the incident, President Obama called for new offshore drilling in the Atlantic Ocean from Delaware to central Florida, including the northern waters of Alaska. Also, Obama wanted Congress to lift a drilling ban in the eastern GOM, which is only 125 miles from Florida beaches and a major tourist (read: revenue generating) area (Broder). This seeming reversal brought about cries from environmentalists, conservationists and the liberal wing of the Democratic Party hoping that reducing carbon-based fuels would be fully embraced. There were even some on the right that claimed that Obama had not gone far enough or in some cases had reversed previous OCS energy policy by delaying lease sales.

Republicans, on the other hand, were in a strange position themselves. It would be virtually impossible to chant "Drill, baby, drill!" while human suffering and ecological ruin were taking place live on CNN. To make matters worse, Republicans are often labeled as the party of 'big business' and 'big oil' and BP certainly is both. When considering the campaign contribution patterns of BP, it would be easy to point out that they favor Republicans over Democrats by almost 2 to 1

since 1989. But, when analyzing the numbers a little closer, BP donated almost 5 to 1 in favor of incumbents regardless of party affiliation (Center for Responsive Politics). In other words, prior to April 20, BP liked things the way they were.

By early May, there was concern that prolonged uncertainty joined with a failure by BP and the federal government to stop the gushing oil would wreak havoc on the financial systems of the world (Gonzalez and Stein) and cost tourism and fishing industries billions of dollars (Pagnamenta). Beach closings dramatically rose to ten times more than normal (Kennedy). Yet the price of oil did not dramatically increase beyond what is seasonably expected after Memorial Day. And, the spill did not cause other countries engaged in offshore drilling to miss a step (Llana). Brazil, for example, con-

tinues to press forward on its OCS, but it still embraces alternative fuel development as well. Major companies like Chevron and independent players like Anadarko have talked of shifting capital and resources out of the Gulf (Gonzalez and Stein). As of this summer, though, more than 60,000 square miles of "prime fishing grounds remain closed" (Jonsson).

Even the US Chamber of Commerce took this as an opportunity to voice its discontentment with the Obama administration by stating in a open letter: "Instead of continuing their partnership with the business community and embracing proven ideas for job creation, they vilified industries while embarking on an ill-advised source of government expansion, major tax increases, massive deficits, and job-destroying regulations." (Hendon)

Even more, the blame-game that is played out in Congress may have hit a new high (or rather low) when the executives BP, Halliburton and Transocean appeared before a Senate committee and blamed each other for the explosion and subsequent oil spill. Perhaps the reason for such unflinching finger-pointing can be found in section 1001(d) of OPA that provides a way out of liability for a responsible party by showing that

*BP donated almost
5-to-1 in favor of
incumbents...
BP liked things the
way they were.*

the damages were the result of a third party's actions (OPA).

President Obama rightfully showed outrage at such a spectacle, but the problem was deeper than the gushing oil itself. By May 13, the world was watching live feeds of the spill and the public, especially those in oil producing states that also depended on tourism and seafood exporting, such as Louisiana, were in a foul mood. Almost a month had gone by since the BP blow-up and there was little federal leadership, which forced GOM states to take the lead where possible with limited resources.

Still, few believed that the White House had handled this crisis properly. In a Washington Post-ABC News poll on July 15th, more than 73 percent disapproved of the way the President was dealing with the oil spill. The blame should not begin or end with the President. In reality, MMS, often called one of the most dysfunctional federal agencies with a history of inconsistent policy-making (Kaufman), had issues before he took office and attempts to hang this crisis around Obama's head the way Hurricane Katrina was around Bush's have yet to work (Baker). Still, there is a major difference between avoiding culpability and demonstrating leadership.

A couple of major set-backs occurred within weeks of one another that further aggravated the situation. First, Elizabeth Birnbaum the Director of MMS resigned as Obama was about to announce the first moratorium. Department of Interior Secretary Ken Salazar, according to the New York Times, had asked Ms. Birnbaum to leave. Regardless, she was an important player in this process with loads of experience. Second, a New Orleans federal judge lifted the six-month moratorium on new drilling and even went further by "immediately prohibiting" the U.S. from enforcing the ban (Calkins and Fisk). According to Federal Judge Martin Feldman, the Obama moratorium was a blanket attempt to deal with a specific instance and was too

broad and sweeping. Obama was quick to ask for an appeal and the moratorium de jure process began.

The problem as self-defined for the federal government in general and President Obama specifically was at least two-fold:

1. how to stop the BP oil spill under the present system without actually taking a leadership role just in case BP failed; and
2. how to reform the present system during the crisis to show leadership. What is actually needed is a comprehensive overhaul of energy policy-making.

In Louisiana, more than 11,000 citizens from across the state travelled to Lafayette to attend the Rally for Economic Survival on July 21st. Regardless of party,

race or gender, Louisiana spoke with a single voice: lift the moratorium and let people get back to work. This issue has brought together Senators Landrieu (Democrat) and Vitter (Republican) and the entire Congressional delegation. While there

may be unity in the state, the numbers just do not add up. If you took all the Electoral College delegates from oil producing states they would still be less than those from California alone. Clearly, finger-pointing and partisan politics will not solve the immediate crisis or the long-term energy policy-making matter.

All the Electoral College delegates from oil producing states, are fewer than those from California alone.

Better Energy Policy

Following the blow-up, the initial response was predictable. There was talk of getting completely away from fossil-fuels and making the deserts a solar energy haven (Beck). There were investigative reports alleging trouble with MMS and that danger loomed large albeit after the fact (Kaufman). In many ways, the long-term arguments for increased support for alternative or renewable energy and a better energy policy governance structure are sound. The concern lies somewhere between now and when there really will be a shortage

Because the stakes are so high for energy exploration, development companies and those that regulate them will increasingly find themselves in conflict.

of oil and natural gas. It is hard to make the case that the US is running out of oil and gas when 85 percent of its territorial waters are off-limits to energy exploration and production (Lieberman). This is not to suggest that every place that has oil and gas be considered viable. There are ecological, tourism and quality of life issues that are equally important.

The reorganization of MMS into the Bureau of Ocean Management, Regulation and Enforcement (BOEMRE) less than thirty days after the BP blow-up by DOI Secretary Salazar suggests that this was something already in the works prior to the BP blow-up. In fact, Salazar had issued a round of reforms for on-shore facilities on January 6, 2010 that received little fanfare. Here, an “Energy Reform Team” had already been assembled to provide “greater coordination and improved accountability” for the on-shore sector. Salazar appointed Michael Bromwich as the new director of BOEMRE and his investigative background with the FBI should serve him well in rooting out systemic problems described by the NOAA to MMS more than six months before the spill. These problems include lack of adequate permitting for deepwater rigs, risks associated with spills, and drilling activity in general.

As reported in the New York Times, one MMS scientist stated that “You simply are not allowed to conclude that the drilling will have an impact. If you conclude that certain aspects will be affected, your report gets disappeared in a desk drawer and they find another scientist to redo it or they rewrite it for you” (Urbina). Even the General Accountability Office (GAO) sent a memo to MMS asking it to strengthen its commitment to environmental regulations. This was sent on March

8, 2010. In other words, BP was not the only one at fault.

The idea that bureaucracies are often understaffed, overworked and pressured to shield those they regulate is nothing new. The process is a bit more complex than the “Iron-Triangle” of sub-government often described in introductory political science classes to bored freshman. While these unseen bureaucrats are often the subject of ridicule for their insistence on procedure and the use of ‘red tape,’ they are essential to maintaining the quality of life we have (Waterman).

If BOEMRE is to make the necessary changes, then it will certainly experience a period of turbulence. In a period of downsized federal and state governments, the concept of “collaborative public management” seems ever more important (O’Leary and Bingham). Here, resources and information are shared across agencies under a common, non-partisan, professional manner. Because the stakes (read: profits) are so high for energy exploration, development companies and those that regulate them will increasingly find themselves in conflict (Clarke and McCool). Yet, in terms of energy, oil and gas will remain the major focus on the US and Louisiana for years to come.

Conclusion

Unless there is going to be a complete and instantaneous paradigmatic shift in energy exploration and development that includes an infrastructure system



Michael Bromwich and Ken Salazar testify before the Senate Interior Appropriations Subcommittee, June 2010. (Tami Heilemann-DOI)

for delivery, then the US will be tied to the oil and gas industry for the foreseeable future. Regrettably, that means there will remain risks.

But, that does not mean that business as usual is acceptable. Restructuring of the energy governance structure has begun and will continue over the next several years, but corporations must accept a wider socially responsible role. This is a symbiotic relationship: governments rely upon oil companies for energy, taxes and jobs, but also for proficiency in their field. If there is ever going to be an expansion of drilling (an utterly different issue) then the oil and gas industry must demonstrate that it is safe for workers and non-harmful to the environment.

In closing, these are some recommendations that address the broader concerns:

- Real-time monitoring of drilling rigs in the GOM;
- Increased number of inspectors for BOEMRE;
- Increased frequency of random inspections;
- Separation of compliance and inspection functions from permitting and leasing;
- Inclusion of additional relevant federal and state agencies in permitting (e.g., Department of Energy) and compliance (e.g., NOAA, EPA);
- Incentive-based reforms that reward those companies that exceed compliance standards;
- Increased funding for spill containment and clean-up research;
- Coordination of energy policy at the federal and state level;
- Rewarding those states (i.e., Louisiana) that accept risk for energy development that other states do not;
- Investment of a percentage of all GOM lease-sales in renewable energy infrastructure;
- Creation of a Trust Fund for individual states (i.e., loss of tourism, aquaculture);
- Fast tracking future litigation through the federal court in New Orleans;
- Use of the safety and environmental compliance history of a company as part of the matrix for determining leases; and
- Increased funding for alternative energy infrastructure.

Of all the issues facing the US and Louisiana, energy policy-making has the potential to be the least partisan. Unfortunately, this is not an era for reaching across the aisle and making American policy. The result is likely to be more expensive energy, fewer jobs and a governance structure that failed to learn (once again) from its past mistakes.

About the Author

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Irony as Thick as Gulf Oil¹

By Barbara Forrest

There are times when the irony of life is so thick that one has to just stand back and marvel at it. The summer of 2010 was one of those times in Louisiana. June 25, 2010, marked the second anniversary of Gov. Bobby Jindal's signing the creationist Louisiana Science Education Act (LSEA), which was drafted and promoted by the Louisiana Family Forum (LFF).² LFF's executive director, Rev. Gene Mills, is one of Jindal's staunchest political allies.

On the anniversary of Jindal's signing this regressive legislation, with coastal wildlife trapped and dying in sludge, with the human beings of the Gulf Coast facing the loss of culture, livelihoods, and our beautiful

wetlands — courtesy of BP — Gov. Jindal felt called to set aside June 27 as an official day of prayer for divine assistance in “persevering” through the mess in the Gulf of Mexico — and to post the call to prayer on his official state website.³

In 2008, his constituents couldn't even get him to acknowledge the letters he received from Louisiana scientists and citizens who asked him to veto the LSEA. But in the summer of 2010, with the gulf hemorrhaging oil, he was only too happy to sign an official proclamation declaring a “Statewide Day of Prayer for Perseverance Through Oil Spill Crisis.”⁴ The irony of this is as thick as the oil in the Gulf.

1 Adapted and updated from the original article at the Louisiana Coalition for Science website, June 28, 2010, <http://lasciencecoalition.org/2010/06/28/irony-thick-as-oil-in-louisiana/>.

2 Bill Barrow, “Science Law Could Set the Tone for Jindal,” *Times-Picayune*, June 27, 2008. <http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-11/1214544197127670.xml&coll=1>

3 “Governor Jindal Orders June 27th as Statewide Day of Prayer for Perseverance Through Oil Spill Crisis,” press release, Office of the Governor, June 24, 2010, <http://www.gov.state.la.us/index.cfm?md=newsroom&tmp=detail&catID=2&articleID=2259>.

4 Governor Bobby Jindal, “Proclamation on Statewide Day of Prayer,” June 24, 2010, http://lasciencecoalition.org/docs/Jindal_Gulf_Prayer_Proclamation_6.27.10.pdf.

Divine Networking

In a guest commentary for Buzzflash, Talk to Action columnist Bill Berkowitz revealed the rationale for the official June 27 prayer vigil as found in Charisma Magazine's "News Online."⁵ (Charisma is published by Strang Communications, "a multi-media communications company focused on spreading the name and fame of Jesus throughout the world through the mass media."⁶) The Charisma article confirmed that Texas Republican operative David Barton (see below) drafted the basic prayer proclamation, which the governors of Texas, Louisiana, Alabama, and Mississippi could adapt for their states. It also quotes Cindy Jacobs, co-founder of the Generals International Ministry's United States Reformation Prayer Network, who coordinated the prayer efforts.

Jacobs' belief about the cause of the oil spill seems to shed some light on Gene Mills' strange assessment (see below) of the oil gusher as the "second spiritual assault" on New Orleans. According to Charisma:

"Jacobs believes the oil spill is more than a natural disaster but partly the result of greed, debauchery on the beaches, poor environmental stewardship and a lack of U.S. support for Israel — all issues her network has been repenting of since the leak began.

*"Whenever there's violent weather or some things like this, you have to ask if it's just a natural disaster or if you're reaping something that's been sown," she said. "We feel this is a cumulative thing."*⁷

Prayers from the Capitol

The official praying actually started on Monday, June 21, in the Memorial Hall (front lobby) of the Louisiana State Capitol, as we are informed by the Louisiana Family Forum, which (unsurprisingly) distributed a pdf of the governor's official prayer proclamation (see note 4).

5 Bill Berkowitz, "Praying Away the Oil, BP's Oil-Spewing Disaster: It's God's Message to America, Conservative Christian Evangelicals Say," guest commentary, Buzzflash.com, June 29, 2010, <http://blog.buzzflash.com/contributors/3315>.

6 "About Strang Communications," Charismamag.com, January 24, 2009, <http://www.charismamag.com/index.php/about-us>.

7 Adrienne S. Gaines, "Governors Declare Day of Prayer for Gulf Spill," Charisma, June 24, 2010, <http://www.charismamag.com/index.php/news/28812-governors-declare-day-of-prayer-for-gulf-spill>.

According to an article in the LFF's June 22, 2010, Family Facts newsletter, "lawmakers, pastors, and intercessors joined Representative Regina Barrow, Senator Sharon Broome, and Governor Bobby Jindal for a Prayer Vigil concerning the Deepwater Horizon Oil Explosion."⁸ The article is headed by a captionless photo of the assemblage who gathered in the lobby to pray; part of the photo URL is "2010govPrayerMtg.jpg."⁹ Also prominently featured in the article is a photo of Jindal undergoing the laying on of hands by people who are praying for him, as the photo URL indicates: "prayingforJindal.jpg."¹⁰

The article also notes that "Governor Jindal read Psalms 146."¹¹ (The LFF has also posted a YouTube video of the 2007 pre-inaugural Christmas gala that they threw for Jindal at the Old State Capitol, where he likewise underwent the laying on of hands in front of hundreds of attendees, including several former governors, with Rev. Mills presiding [at 2:17].¹²) The laying on of hands is a religious ritual that signifies, among other things, "setting apart [a person] for the service of God."¹³

It is ironic that Governor Jindal could not squeeze into his schedule even one personal response to the Louisiana citizens, scientists, and teachers who implored him to protect the teaching of science in the state's public schools.¹⁴ Yet he always seems to be available for the LFF's political-religious photo ops, such as its 2009 Annual Legislative Awards Banquet, a yearly, post-session event at which the LFF gives awards to Louisiana legislators who vote their way.¹⁵ (They also post on their website annual House and Senate "scorecards"

8 Louisiana Family Forum, "Let Us Pray!" LFF Commentary, Family Facts, June 22, 2010, <http://lafamilyforum.us/FFarchives/v12i24.html>.

9 <http://lafamilyforum.us/images/familyfacts/2010govPrayerMtg.jpg>.

10 <http://lafamilyforum.us/images/familyfacts/prayingforjindal.jpg>. The background of this photo suggests that it was taken elsewhere rather than at the June 21 "prayer meeting" at the Capitol.

11 <http://www.biblegateway.com/passage/?search=Psalm+146&version=NIV>.

12 Louisiana Family Forum, "Louisiana Family Forum's Governor Christmas Gala," YouTube website, posted January 8, 2008, <http://www.youtube.com/watch?v=n3nje8u3yfa>.

13 "Imposition of Hands," in Encyclopædia Britannica (2010), <http://www.britannica.com/EBchecked/topic/254238/imposition-of-hands>.

14 "Open Letter to Gov. Bobby Jindal: Veto SB 733," Louisiana Coalition for Science Blog, entry posted June 17, 2008, <http://lasciencecoalition.org/2008/06/17/jindal-veto-sb-733/>.

15 "Louisiana Family Forum Action's Photos — LFF Annual Legislative Awards Banquet," Facebook.com, September 29, 2009, <http://www.facebook.com/photo.php?pid=3110868&id=65810702352>.

listing those who don't.¹⁶) Jindal's finding room in his schedule for the prayer photo op and the LFF awards banquet is entirely typical of the way he allots his gubernatorial time. The LFF asks, and the LFF receives.¹⁷ Indeed, the Catholic governor is very attentive to his religious — especially the Protestant — base. Even as the oil was still gushing in the gulf on July 4, Jindal made time to attend an Independence Day service at the Open Door Baptist Church in Denham Springs, where he “took the opportunity to share his Christian faith, giving a speech familiar to many church audiences across the U.S. since he entered elective politics.”¹⁸

Jindal's Prayer Partners

The fact that people would turn to prayer over the

16 Louisiana Family Forum, “2010 Legislative Scorecard,” <http://www.lafamilyforum.org/2010scorecard>.

17 Concerning the LFF's Power over the Louisiana legislature, see the Baton Rouge Advocate's excellent editorial, “Bible Frauds on the March,” *The Advocate*, June 28, 2010, <http://www.theadvocate.com/opinion/97276424.html>.

18 Mike Dowty, “Jindal Shares Faith,” *Livingston Parish News*, July 8, 2010, http://livingstonparishnews.com/news/article_3c7acb60-8a1b-11df-b45c-001cc4c002e0.html.



Prayer for Jindal

Louisiana Family Forum Newsletter, June 2010

BP catastrophe is not surprising. Devout residents all along the Gulf Coast were understandably doing anything they thought might help as the seemingly unstoppable gusher of crude oil fouled both the coast and their lives. A good deal of prayer has been prompted in Louisiana in recent years by the well-known catastrophes that have blown in from the Gulf of Mexico. When people face losing everything they love, prayer is a source of hope and comfort. However, the irony of our anti-science governor signing a prayer proclamation when he would not sign his name to protect the teaching of science is a bit much. Yet it is to be expected in light of the fact that Jindal has thrown in lock, stock, and barrel with the extreme Religious Right. Vetoing the LSEA in 2008 would have meant breaking ranks with Rev. Mills, who — being as much a political operative as a man of the cloth — is one of Jindal's unofficial right-hand men.¹⁹ Mills orchestrated the passage of the LSEA, as he has done with many other regressive bills. (The LFF has promoted creationism since its founding in 1999.)

As it turns out, Mills also announced that he orchestrated the drafting of the prayer proclamation, saying that Louisianians had not prayed enough about the oil catastrophe. In his June 24, 2010, e-mail to LFF supporters, “June 27th CALL TO PRAYER From Gene Mills!” he observed that despite the fact that “America has assembled the brightest minds, the newest technology and America's finest for 65 consecutive days to seal this breach in the Gulf of Mexico,” we had “failed to . . . corporately ‘pause and pray’ and admit that our efforts are futile without the assistance of the Almighty!”²⁰ So, of course, an official proclamation from the governor was needed. (Note the additional irony of the double entendre in Mills's exhortation that Louisianians must “corporately” pray that God would help us get rid of BP's oily deluge.)

In a remark aimed directly at his fellow clergy, Mills divulges that he had help in drafting the proclamation:

“Pastors, I requested that Governor Jindal initiate this

19 Adam Nossiter, “In Louisiana, Inklings of a New (True) Champion of the Right,” *New York Times*, June 2, 2008, <http://www.nytimes.com/2008/06/02/us/02jindal.html>. See also Jeremy Alford, “Holy Warriors,” *The Independent Weekly*, May 26, 2010, <http://www.theind.com/cover-story/6289-holy-warriors>.

20 Gene Mills, “June 27th CALL TO PRAYER From Gene Mills!” e-mail message, June 24, 2010. On file with Barbara Forrest.

call and have been assisted by David Barton of Wallbuilders, Tony Perkins of Family Research Council and others in crafting the proclamation and implementing its directive.”²¹

Tony Perkins, a former Louisiana legislator who helped found the LFF and now wages nation-wide culture war from Washington, DC, is the head of the Family Research Council.²² Perkins pulled some creationist shenanigans of his own during his time in the legislature, as noted by the American Geological Institute in Washington, DC, in 2003:

Louisiana House Bill 1286, introduced by Rep. Tony Perkins (R-Baker), prohibits any state or local government entity from “knowingly printing or distributing material that contains information that is false or fraudulent.” The bill is nearly identical to an Arkansas bill that was defeated in March by a handful of votes. The difference is that the Arkansas bill specifically mentioned the theory of the age of the earth, the theory of the origin of life, the geologic column, and radiometric dating as examples of such falsehoods. The Perkins bill does not provide any examples at all. Evolution opponents could use the bill’s provisions to challenge textbooks, forcing school districts into endless cycles of litigation.²³

David Barton, a Republican political operative in Texas who poses as a historian, is almost completely unknown in Louisiana.²⁴ Barton founded Wallbuilders, a “national pro-family organization that presents America’s forgotten history and heroes, with an emphasis on our moral, religious and constitutional heritage” — in other words, he spreads Religious Right propaganda

21 Mills, “June 27th CALL TO PRAYER From Gene Mills!”

22 People for the American Way, “Organizational Profile: Family Research Council,” Right Wing Watch website, December 2003, <http://www.rightwingwatch.org/content/family-research-council>.

23 “State Challenges to the Teaching of Evolution (1-7-03),” American Geological Institute, January 7, 2003, <http://www.agiweb.org/gap/legis107/evolution.html>. See HB 1286 at http://www.legis.state.la.us/leg_docs/01RS/CVT2/OUT/00001BEL.PDF.

24 Frederick Clarkson, “David Barton’s New Stealth Campaign for the GOP,” Talk to Action blog, entry posted October 10, 2006, <http://www.talk2action.org/story/2006/10/10/19281/863>.

about the Founding Fathers.²⁵ Rob Boston of Americans United for Separation of Church and State exposed Barton’s pseudo-scholarship almost twenty years ago.²⁶

Barton was one of the “expert” reviewers whom the far-right contingent of the Texas Board of Education selected to screw up the Texas history standards in 2009.²⁷ Boston points out Barton’s “credentials” for this task: “Barton earned a bachelor’s degree in ‘Christian Education’ from Oral Roberts University in 1976 and later taught math and science at a fundamentalist Christian school founded by his father.”²⁸ These qualifications, however, earned Barton a position as “Prof. David Barton” at Glenn Beck’s online “Beck University,” where he teaches courses (101, 102, and 103) in “Faith.”²⁹

It turns out that Barton is also a buddy of Bobby Jindal. He accompanied Jindal on a campaign tour of Baptist churches in North Louisiana in October 2006, after which Jindal was a guest (two days in a row) on Barton’s Wallbuilders Live! radio program.³⁰ Jindal gushed to the radio audience about what a knowledgeable historian Barton is.³¹ After Jindal won the governorship, the LFF sent out an announcement that “Historian David Barton” would be Jindal’s guest at a “Pastors’ Inau-

The irony of our Governor signing a prayer proclamation when he would not sign to protect the teaching of science is a bit much.

25 “David Barton Bio,” Wallbuilders.com, <http://www.wallbuilders.com/ABT-bioDB.asp>.

26 Rob Boston, “Sects, Lies and Videotape: David Barton’s Distorted History,” Church & State, April 1993, 8-12, <http://candst.tripod.com/boston1.htm>.

27 “Please Get David Barton a Real History Book,” TFN Insider blog, entry posted October 5, 2009, <http://tfninsider.org/2009/10/05/please-get-barton-a-real-history-book/>.

28 “Please Get David Barton a Real History Book,” TFN Insider blog, entry posted October 5, 2009, <http://tfninsider.org/2009/10/05/please-get-barton-a-real-history-book/>.

29 “Announcing Beck University,” Glennbeck.com website, July 6, 2010, <http://www.glennbeck.com/content/articles/article/198/42502/>. James Stoner, chair of the Department of Political Science at Louisiana State University in Baton Rouge, is also one of the professors, teaching courses in “Charity.”

30 Barbara Forrest, “Bobby Jindal’s Creationism and Alliance with David Barton,” Talk to Action blog, entry posted September 29, 2007, <http://www.talk2action.org/story/2007/9/29/22813/8088>. See also Barbara Forrest, “Governor Jindal’s Friends in Low Places,” Louisiana Coalition for Science blog, entry posted July 6, 2009, <http://lasciencecoalition.org/2009/07/06/governor-jindals-friends/>.

31 Bobby Jindal, interviews by David Barton and Rick Green, Wallbuilders Live!, October 18 & 19, 2006. <http://www.wallbuilderslive.com/>. Audio on file with Barbara Forrest.

gural Prayer Breakfast” in which the LFF participated on January 14, 2008.³² So Jindal reveals that he is not only anti-science but — through his chummy association with Barton — anti-history as well. Mills’ partnership with Barton on the Louisiana prayer proclamation simply continues the close working relationship that exists among Jindal, Barton, Perkins, and Mills himself.

So Rev. Mills pulled together his divinely inspired effort to protect the Gulf Coast. Actually, ten days after the rig explosion, in his April 30, 2010, End of Week newsletter, he had already issued a call to prayer — which included the weird, ambiguous comment about a “spiritual assault” on New Orleans:

“It is not coincidental that this event occurred at precisely the point Katrina tracked and struck its destructive blow to New Orleans. This second spiritual assault warrants that we “Cry Out for success in the Gulf!”³³

Next, in a call for fasting as well, he provided a prayer, which, among other things, asked God to inflict the oil on someone else (look out Cuba!):

“As we are led by the Holy Spirit, let us pray... For God’s hand upon His creation, the land, the sea, and the winds. “Father, direct and command prevailing winds to move southward. We call forth the green grass of our wetlands to thrive and flourish!”³⁴

Now for the final irony: Almost two months later, in his June 4 End of Week newsletter, “Drills, Spills and Bills” (in which he updated readers on his lobbying successes at the Capitol), Mills was defending BP against the prospect of prosecution. Referring indirectly to the Obama administration’s announcement that there would be a criminal investigation, he made no mention of the fact that eleven human beings — husbands, dads, sons, brothers, buddies — are dead because of BP — twelve if you count the tragic suicide of Alabama fisherman Allen “Rookie” Kruse.³⁵ And

domestic violence calls tripled in beautiful little Bayou La Batre, Alabama.³⁶ (Family values, anyone?³⁷) But Mills was concerned about BP’s stock ratings:

[Obama’s] policy decisions to close drilling and proceed with criminal investigations appear counter-intuitive, calculated, and politically theatrical. BP’s stock fell dramatically within minutes of the criminal investigation announcement! How will Louisiana subrogate [sic] against an [sic] bankrupt BP?

Obama has repeatedly charged BP with withholding information... does he really expect they will suddenly be forthcoming with all the latest intelligence now that their every word and action may be used against them in Congressional Investigation [sic]? This is all a sad show for the media and the American people to avoid culpability. May God have mercy on our coast!³⁸

There isn’t much else to say after this revelation, is there? Except to recall — once again — that under the governorship of Bobby Jindal, Gene Mills is calling the shots on Louisiana science education policy. Have mercy, indeed.

[gulf-widow-oil-spill_N.htm](#).

³⁶ Robert Samuels, “Gulf Oil Spill’s Mental Toll Takes a Solemn Turn,” Miami Herald, June 28, 2010, <http://www.miamiherald.com/2010/06/27/1704058/mental-toll-takes-a-very-solemn.html>.

³⁷ The LFF describes itself as “an organization committed to defending faith, freedom and the traditional family in the great state of Louisiana!” See “About LFF,” Louisiana Family Forum website, <http://www.lafamilyforum.org/about-lff>.

³⁸ Gene Mills, “Drills, Spills and Bills,” End of Week with Gene Mills newsletter, June 4, 2010, <http://www.lafamilyforum.org/drillspillsbills>.

About the Author

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³² Louisiana Family Forum, “LA Inaugural Prayer Breakfast,” Family Facts newsletter, January 8, 2008.

³³ Gene Mills, “Louisiana Cries Out!” End of Week with Gene Mills newsletter, April 30, 2010, <http://www.lafamilyforum.org/043010EOW>.

³⁴ Mills, “Louisiana Cries Out!”

³⁵ Brian Kelly, “Boat Captain’s Suicide Shows Human Toll of Gulf Oil Disaster,” USA Today, June 27, 2010, <http://www.usatoday.com/news/nation/2010-06-26->