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Letter from Gary Bass: Washington's Corruption Woes

Guilty pleas by super-lobbyist Jack Abramoff and his partner Michael Scanlon, former key staffer of former-House Majority Leader Tom DeLay, have put a spotlight on graft and corruption in Washington--and the obscene influence money exerts over politics today. Both Republican and Democratic leaders are now poised to offer "solutions" to this unseemly situation. These solutions, however, must do more than simply scratch the surface of this enormous problem. And dramatic changes to this dysfunctional dynamic of Washington politics are unlikely unless the public gets engaged.

It is easy to become jaded about stemming the flood of money which passes hands and influences politics in Washington. PoliticalMoneyLine.com reports $2.42 billion was spent in the 2004 on federal elections in 2004, much more than the 2000 elections. Reported lobbying expenditures jumped 34 percent between 2000 and 2004 from $1.6 billion to $2.1 billion. At the

same time, privately funded travel for members of Congress jumped 38 percent from $2.5 million to $3.5 million.

These figures ignore the gifts and the behind-the-scene deals, of which the Abramoff scandal is likely just the tip of the iceberg. It leaves out the myriad questionable ways money changes hands in Washington through entities such as Senate Majority Leader Bill Frist's (R-TN) charity, World of Hope, which raised $4.4 million in 2004, including $2.7 million from just eighteen donors. According to the Associated Press, World of Hope donors included "several corporations with frequent business before Congress, such as insurer Blue Cross/Blue Shield, manufacturer 3M, drug maker Eli Lilly and the Goldman Sachs investment firm."

Upon closer examination, the conduits through which money flows become incredibly complex. For example, World of Hope's IRS Form 990 shows that Frist's long-time political fundraiser, Catignani & Bond, whose founding partner Linda Bond is the wife of Sen. Christopher Bond (R-MO), received $276,125 from the charity in 2004. In addition, the charity hired the law firm of Jill Holtzman Vogel, who is the wife of Frist's lawyer Alex Vogel. Holtzman Vogel, who is currently raising money for a run for Senate in Virginia in 2007, received thousands of dollars in contributions in 2005 from Catignani & Bond and from her husband, among numerous other sources, according to data released by the Virginia Public Access Project.

Despite the convoluted nature of its flow, one thing is certain: money is flowing through politics at an all-time high. Some might argue that stopping this flow is a bit like trying to holding a bursting dam at bay with a new leak springing up just as one is filled. It is easy to feel powerless as an outsider when it comes to the rich and powerful protecting the interests of the rich and powerful. A recent Washington Post-ABC News poll, in fact, found that 58 percent of Americans believe the Abramoff case is evidence of "widespread corruption in Washington." The survey found broad support for reform in the wake of the Abramoff scandal, which is exactly why it is the perfect time to push for change. The public is outraged, and the moment exists to demand legislation to clean up the situation.

The nonprofit community has long complained about the influence money buys in Washington and argued that there should be a level playing field so that all voices are equally heard. This is a moment when the nonprofit sector should strongly advocate for just such a level playing field.

There are a number of solutions being discussed by Republican and Democrat leaders:

- More disclosure on lobbying contacts--more frequent and substantive reporting on each lobbying contact;
- Stricter limits, if not outright bans, on gifts to legislators, as well as on donated travel, whether through the use of the corporate jet or paid airfare;
- Disclosure of each fundraising event by lobbying firms and organizations that benefit federal candidates and the amount of money raised;
- Disclosure of contributions made to entities, such as universities, created in the name of a member of Congress , as well as contributions to entities established, financed, maintained or controlled by members of Congress, such as charities or foundations; and
- Strengthening the authority of the congressional ethics committees to investigate and punish violations.

More disclosure is certainly a necessary first step, particularly information being made available online in a searchable format. But disclosure is not enough. We need more regulation and enforcement--and ultimately we to move toward getting money out of politics. We have learned from successes in several states that we can genuinely change the rules of the game when it comes to elections. It is time to pick up on "clean money campaign" successes in Arizona,

Connecticut, Maine, Massachusetts, New Mexico, North Carolina, and Vermont, where public financing of some elections has become the rule.

In a representative democracy such as ours, lobbying is a constitutional right that should be cherished and firmly protected by the First Amendment. The right to petition our government--all branches of government--is key to not only ensuring government accountability but also making our government responsive to "we, the people." But moneyed interests now threaten accountability and responsiveness, not to mention the very integrity of our political system, and we must do something to address this threat.

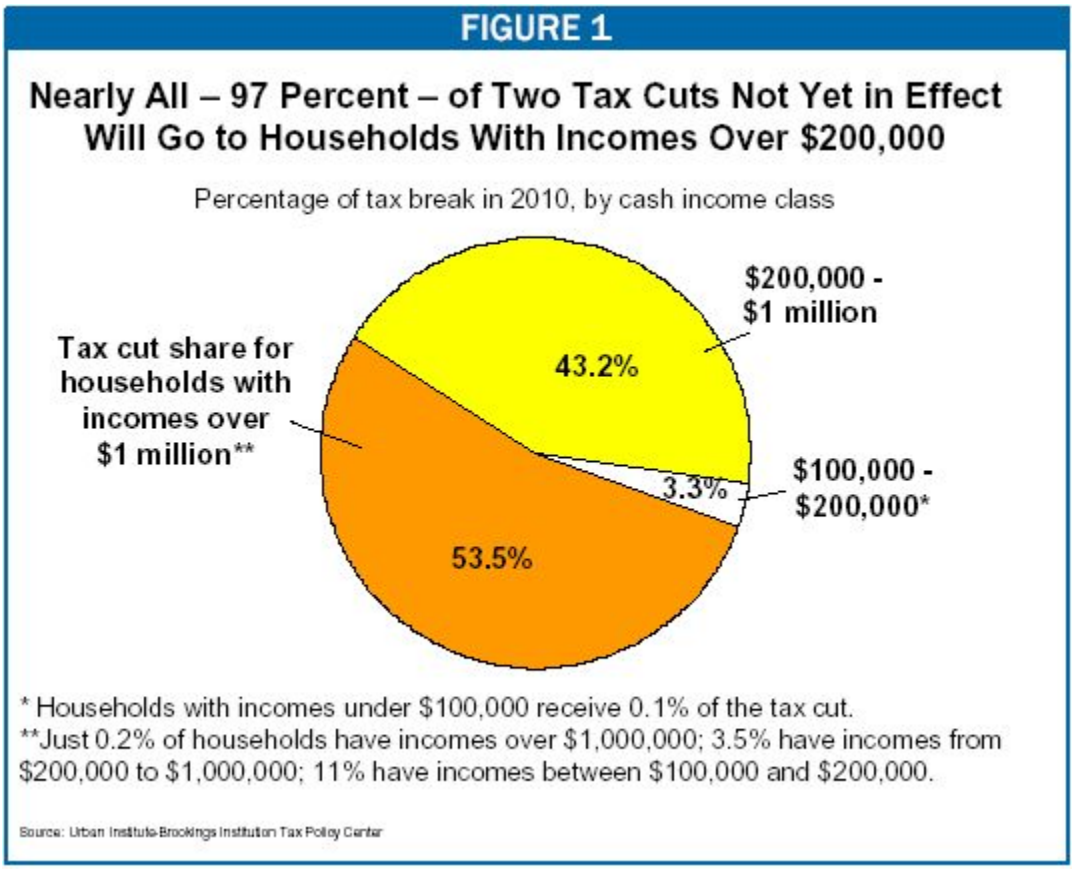
Two New Tax Cuts Benefit the Wealthy

As a fitting kick-start to a year in which President Bush is expected to push hard to make his expensive and unbalanced tax cuts permanent, two new tax cuts went into effect that almost exclusively benefit high-income households. These tax cuts, referred to as "PEP" and "Pease," were enacted in 2001 but did not go into effect until 2006--an underhanded but politically advantageous move that kept the total cost of the 2001 tax cut package within set budget limitations.

PEP, which stands for "personal exemption phase-out," and Pease, named after former Rep. Don Pease (D-OH), were tax increases enacted in the 1990's as part of a true deficit reduction package, and are now being phased out through 2010. The PEP provision prevents high-income earners from claiming a personal exemption ($3,200 in 2005) for each member of their household, while the Pease provision limits the value of itemized deductions for taxpayers with high incomes. With the phase out of these provisions, high income earners will be able to both claim higher exemptions and itemize more deductions.

Together these tax cuts will cost $27 billion over the next five years (roughly two-thirds of the amount Republican leaders claim will be "saved" with the budget cuts bill). These tax giveaways will primarily wind up in the pockets of the rich, who have already benefited enormously under Bush--such as those with annual incomes of over $1 million who have received an average windfall of $103,000 in 2005 from the president's first-term tax cuts.

Now, thanks to the phasing out of PEP and Pease, by 2010 taxpayers earning over $1 million will see an average additional tax kickback of $19,234. Those making between $75,000 and $100,000 will see an average of $1, and those making less than $75,000 will see nothing. As the chart below illustrates, nearly all of the benefits of these two tax cuts will go to households with incomes over $200,000:



Source: Center on Budget and Policy Priorities, http://www.cbpp.org/12-28-05tax.htm

Along with PEP and Pease, President Bush is prepared to take his tax-cutting mania even further, commenting on Jan. 7 on his plans to push for making his 2001 and 2003 tax cuts--which cost roughly $1.7 trillion over ten years--permanent that:

> "We're seeing new evidence of how our tax cuts have created jobs and opportunity, [and] some people in Washington are saying we need to raise your taxes. They want the tax cuts to expire in a few years, or even repeal the tax cuts now."

The tax cuts to which he was referring are largely responsible for the nation's transition from budget surpluses to enormous budget deficits, because they have so significantly reduced the revenue base. Making the cuts permanent would solidify a structural deficit that would ultimately bankrupt the country, as defense and homeland security spending continue to claim an ever-larger portion of the budget, as the Baby Boomers put increasing demands on entitlement programs, and as the interest on the national debt skyrockets.

Congress Has Yet to Pass Budget, Tax Cuts

The budget and tax reconciliation measures laid out in Congress's April 2005 budget resolution took up a good deal of lawmakers' time and energy throughout last fall, and continue to linger unfinished, even as the release of the president's Fiscal Year 2007 budget rapidly approaches. The House of Representatives, in fact, is scheduled to vote on the final budget bill one week before the president is scheduled to release his budget on Feb. 6. The vote will pave the way for

votes on the two remaining reconciliation measures: one to cut taxes by as much as $70 billion and one to increase the national debt limit by $781 billion.

Of the three reconciliation measures, the budget bill has been the most contentious, due to cuts it makes to programs serving low- and moderate-income households, cuts that ultimately do not address the burgeoning deficit. In fact, the net effect of the three bills will be an increase of the deficit by billions of dollars. The cuts are particularly harmful to Medicaid, child support enforcement, foster care, and student loans programs.

Despite these damaging cuts, the budget bill was passed by the Senate on Dec. 21. Senate lawmakers, however, passed a slightly different version of the bill (with three minor modification) than that passed by the House two days earlier. House members, therefore, must vote on the bill a final time before sending it to the president. The first House vote on the budget reconciliation bill was a close one (212-206), and the upcoming vote is expected to be close as well. Nine Republicans voted with Democratic members against the bill. Six Democratic members and ten Republican members did not vote, possibly because the voting took place so closely to the holiday recess.

Moderate House Republicans, a number of whom initially express opposition to the bill but ultimately voted for it, now have the chance to vote their consciences, rather than line up behind their leadership. The Emergency Campaign for America's Priorities is organizing a number of events, including local vigils and phone call blitzes to lawmakers, in an effort to tip the vote against the troubling program cuts. There is still time to **take action** and tell your Representatives to reject the bill.

If the budget cuts bill passes, it will open up an additional $10 billion worth of tax cuts that can be included in the tax reconciliation bill, which still remains unfinished. The House passed a $56 billion bill in early December, on the heels of a $60 billion bill passed by the Senate on Nov. 17. Along with the reconciliation bill, the House passed three tax-cut bills in December. The four bills cost a combined $94.5 billion over five years, twice the total of all cuts to low-income programs being made in the name of fiscal responsibility. The House and Senate still must iron out differences in the tax reconciliation bill in conference--no easy task as the bills are significantly different--and then vote on a final package.

Finally, the House and Senate can be expected to easily pass an increase on the debt limit, which is expected to reach $8.2 trillion in mid-February. As a politically sensitive one, the vote will likely take place late at night, possibility around a holiday, when fewer people are watching. While raising the debt limit will impact few people directly, it is yet another indication of the unsuccessful long-term fiscal policy of the Bush administration and Congress. Bush, who spent $225 billion in federal revenue on tax cuts in 2005 alone, has raised the debt limit three times during his presidency, in June 2002, May 2003, and November 2004. Secretary of the Treasury John Snow recommended to Congress in late December that the debt limit be raised again "as soon as possible."

Collins' Revised Chemical Security Bill: An Improving Grade

Shortly before Congress broke for recess in December, Sen. Susan Collins (R-ME), Chair of the Senate Committee on Homeland Security and Government Affairs, introduced the Chemical Facility Anti-Terrorism Act of 2005 (S. 2145). The bill, which is co-sponsored by Sens. Joseph Lieberman (D-CT), Norm Coleman (R-MN), Thomas Carper (D-DE) and Carl Levin (D-MI), is a

significant improvement over the draft bill previously evaluated by OMB Watch (see Failing Grade on Chemical Security, *The OMB Watcher* [Dec. 13, 2005]), but still fails to require reporting on the use of safer technologies.

The Collins bill would require chemical plants and other facilities storing large quantities of hazardous chemicals to develop vulnerability assessments, site security plans, and emergency response plans, all of which would be sent to the Department of Homeland Security (DHS) for review and approval. Several of the bill's other provisions address ensuring companies adequately address the issue of chemical security. For example, DHS will gain the authority to assess civil and criminal penalties for non-compliance and will even have the power to shut down a non-compliant facility.

Previously, OMB Watch found the draft version of the bill lacking in four areas: 1) not requiring examination and reporting on use of safer technologies; 2) not providing strong universal government standards; 3) not requiring adequate public accountability and disclosure; and 4) preempting state's rights to implement their own chemical security programs. While the introduced legislation makes significant progress in three of these areas, the bill remains deficient on examining safer alternatives, which should serve as the backbone of a strong chemical security bill.

Safer Technologies

The bill fails to include a clear requirement that companies consider and report on potential use of safer technologies to reduce the consequences of a major attack or accident at a plant. A safer technologies provision would not require facilities to adopt safer procedures or chemicals if they exist. Obviously, many factors play a role in the implementation of safer procedures, including cost effectiveness and technological feasibility. Such a provision would merely require facilities to consider and report on possible implementation of safer procedures, technologies or chemicals. In turn, this would significantly improve the ability of DHS to assess best practices and discover national trends in the use of safer procedures.

"This is the biggest oversight of the proposed bill and could endanger its overall effectiveness," according to Sean Moulton, senior policy analyst with OMB Watch. "Any substantial chemical security effort should require companies to conduct such a review as a first step. Safer chemicals and technologies could eliminate the need to implement extensive security and emergency response measures. Moreover, the benefits of the modified bill are limited without the safer technologies provision."

Universal Requirements

Collins' draft bill contained overly broad provisions that encouraged DHS to accept voluntary security forms created by industry associations, which would have created uneven implementation of the law. However, the bill as introduced requires each section of security plans and vulnerability assessments to meet specific standards set by the government. A facility may submit to DHS a plan or assessment developed under other guidelines, such as those under an industry association program. The bill then requires that DHS review the sufficiency of each section of the document to ensure that it meets the government standards. If the document is missing required sections or if sections are found to be insufficient, the company must provide additional materials to DHS.

While an improvement over the draft legislation, this provision should only be used as a temporary measure to ease the transition from any voluntary evaluations currently being conducted to the government standard. Once DHS has established the chemical security program, government reports should become the baseline among industry programs. Allowing submission of alternate documents is intended to avoid duplicative paperwork for companies,

but disparate submissions allow vast differences in emphasis and scope and could result in an uneven playing field of safety standards. The legislation should include a three-year sunset on this allowance to ensure a uniform and reliable chemical security program.

Accountability

Collins' introduced bill also significantly improves public transparency and accountability over its earlier draft. The bill now requires DHS to submit an annual report to Congress that analyzes the performance of chemical facilities in the development and implementation of security plans. In these reports, DHS would detail "common problems, solutions, and industry best practices." The bill also requires DHS to make public all certificates of compliance with the law. While the bill makes individual facility security plans, vulnerability assessments, and other facility-specific documents exempt from requests under the Freedom of Information Act (FOIA), it would allow requests for information regarding certifications, orders for failure to comply, and other data that would not increase security risks for specific facilities. Other provisions grant the Secretary of DHS the authority to order requested material withheld from a FOIA request for 6 months at a time.

The bill also creates a system of problem notification that will allow anyone--chemical facility worker, government official, police officer or member of the public--to alert DHS about a problem regarding security or safety at a chemical facility. This new section recognizes the importance of collecting information from sources other than simply reporting companies. Moreover, the bill protects those who report a problem, stating that "[n]o employer may discharge an employee or otherwise discriminate against any employee" for submitting a complaint. Additionally, the revised bill provides whistleblower protections for workers who notify state or federal agency officials charged with enforcing chemical security plans. A noticeable oversight, however, is that members of Congress are not included among the government officials, to which whistleblowers can disclose information without risk of civil or criminal penalties.

Floor, Not Ceiling

Possibly the most important improvement to the bill is the replacement of the state preemption clause with a state policy protection clause. The previous draft stated that any state legislation that included stronger chemical safety standards than those in the bill would be invalidated. The legislation as introduced states that "[n]othing in this Act shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting chemical facility security that is more stringent than a regulation, requirement, or standard of performance in effect under this Act..." The bill respects the rights of states to provide stronger protections against chemical security vulnerabilities. For instance, a state with major urban centers surrounding chemical facilities, such as New Jersey, which just recently introduced a strong chemical security bill, would have the right to provide stronger security protections for its residents under the Collins' bill.

The Chemical Facility Anti-Terrorism Act of 2005 is expected to be marked up in February by the Committee on Homeland Security and Government Affairs. The bill, which appears to have strong bipartisan support, is expected to move quickly through committee and possibly even the Senate. Before it is considered on the Senate floor, however, we hope a requirement will be added to the bill that companies consider safer technologies, chemicals and procedures in their security plans. This, along with the improvements already made to the bill, would provide a robust chemical security law capable of satisfying its intended purpose: making communities across America safer.

Executive Order to 'Improve' Freedom of Information Act

President Bush issued Executive Order 13392 on Dec. 14 to help improve the processing of requests made under the Freedom of Information Act (FOIA). Open government advocates, however, argue the order is no substitute for legislation in the Senate that would solve many of the underlying problems with FOIA.

Executive Order 13392 requires that each federal agency:

- create a high level chief FOIA officer in each agency;
- conduct an internal assessment of FOIA service problems and develop a work plan for making improvements;
- establish a FOIA Requester Service Center and a FOIA Public Liaison to work with requestors.

Critics are quick to point out, however, that FOIA officers are already in place in each agency, and it is unclear how the new positions differ from these existing agency FOIA positions.

According to a Coalition of Journalists for Open Government analysis, "Best case, these changes will lead to more efficient operations and more posting of routine documents on the Internet... For requesters on the cutting edge of departmental discretion, there's not likely to be much change, although it may now be easier to know that you're a victim of deliberate delay, not inefficiency."

One of FOIA's main problems stems from an October 2001 guidance memo by then-Attorney General John Ashcroft, encouraging government agencies, where defensible, to deny FOIA requests. In his own words, "[w]hen you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis..."

An Executive Order by President Bush or instructions to his Attorney General to change the administration's guidance from the presumption of withholding information to the presumption of disclosure would have gone farther to improving the FOIA system than the new Executive Order.

Other problems with the current FOIA system include increasing FOIA backlogs; excessive search and copying fees; under-funding of FOIA activities; and the increased need to file lawsuits to pry loose information from reluctant agencies.

While the order leaves many of these problems unaddressed, Sens. John Cornyn (R-TX) and Patrick Leahy (D-VT) have proposed two bills--Faster FOIA Act (S. 589) and OPEN Government Act (S. 394)--that would improve the FOIA system.

The OPEN Government Act would:

- allow the public to recoup legal costs from the federal government for improperly withholding documents;
- expand the list of those eligible for fee waivers to include many nonprofits and blog writers;
- establish a tracking system for requests, and require agencies to report on their 10 oldest pending requests, fee waivers approved and denied, and information on how FOIA requests are handled; and

- extend FOIA's reach to information held by federal contractors.

The Faster FOIA Act would require Congress to explicitly state its intention within any bill that would exempt information from disclosure under FOIA.

Both bills have five co-sponsors in the Senate. You can send your elected representatives a customizable email in support of the OPEN Government Act by visiting OMB Watch's Action Center.

After Brinksmanship, PATRIOT Act Is Extended One Month

Among the fireworks at the close of the 2005 congressional session, the extension of the 16 sunset provisions of the USA PATRIOT Act underwent a series of last-minute brinksmanship maneuvers.

On Dec. 13, we reported that the Senate had come to a head in its negotiations on a compromise bill that would renew the provisions while providing sufficient protections of civil liberties. The House and Senate had worked out a compromise in a conference that a number of Senators strongly opposed. Although the House passed the conference agreement, its fate was uncertain in the Senate. On Dec. 16, *The New York Times* reported that the National Security Agency had carried out warrantless domestic spying since shortly after the 9/11 terrorist attacks, tipping the scale in favor of those opposed to the conference agreement.

Later that day, a bipartisan group of six Senators gained the support of 46 colleagues to successfully filibuster the renewal of the sunset provisions of the USA PATRIOT Act. This group demanded that reasonable safeguards be placed on particular provisions to ensure the protection of civil liberties. The president and GOP congressional leaders opposed making any changes to the conference agreement, arguing that enough protections were incorporated into the compromise bill.

After the failure to pass the extension, President Bush remarked that Congress's actions could endanger the lives of Americans. "The terrorists," he explained, "want to attack America again and kill the innocent and inflict even greater damage than they did on Sept. 11--and the Congress has a responsibility not to take away this vital tool that law enforcement and intelligence officials have used to protect the American people."

Bush and Senate Majority Leader Bill Frist (R-TN) said that they would not settle for a temporary extension of the USA PATRIOT Act, maintaining that the six Senators needed to back down and let the conference agreement pass. The Senators refused, and on Dec. 20, 52 senators called for a three-month extension of the USA PATRIOT Act to allow time to work out changes in the conference agreement. With Congress eager to leave for the holidays, it was unclear what would happen since Bush and Frist opposed the three-month extension. At the last moment, a compromise was struck with Republican leadership in the Senate, providing a six-month extension of the law, which was immediately passed in the Senate.

The six-month extension went to the House for a vote by unanimous consent since many members had already left for the holiday. But Rep. James Sensenbrenner (R-WI) rejected the Senate's compromise and replaced it with a five-week extension, creating more theatrics, because it required that the bill then go back to the Senate for a vote. By now, few members of Congress were still in Washington, but the Senate on a voice vote passed Sensenbrenner's five-

week extension. Finally an extension of the sunset provisions of the USA PATRIOT was approved by the Congress just days before Christmas on Dec. 22.

The House is scheduled to reconvene on Jan. 31 in order to address renewal of the Patriot Act, along with budget reconciliation bills. Congress must act by the first week of February on a compromise, which the bipartisan group of six Senators are currently attempting to reshape. Failing a compromise, more fireworks and brinksmanship on the Patriot Act are surely in store.

Is Industry Pulling EPA's Strings?

Correspondences obtained by OMB Watch between the Small Business Administration (SBA) and the Environmental Protection Agency (EPA) raise significant questions about the influence SBA exerted over EPA's decision to pursue its current proposals to reduce chemical reporting under the Toxics Release Inventory (TRI).

The SBA is an independent government agency with a mission to "[m]aintain and strengthen the nation's economy by aiding, counseling, assisting and protecting the interests of small businesses..." The agency has come under fire for its efforts to promote small business interests that come into conflict with environmental, health and safety, and labor standards. Given the extensive correspondence between SBA and EPA on this issue and the profound similarities between the changes SBA sought and those ultimately proposed by EPA, it appears that small business priorities may have been considered over environmental and health concerns.

On Nov. 4, 2002 the EPA announced an On-line TRI Stakeholder Dialogue to "reduce the reporting burden of companies that report to the TRI." Since this dialogue began in late 2002, OMB Watch has discovered that Kevin Bromberg, the lead SBA official on TRI burden reduction and a former chemical industry lobbyist, has held roughly 14 meetings and exchanged numerous emails with EPA officials on limiting TRI reporting requirements.

Many of the emails between Bromberg and EPA suggest a high degree of cooperation on the issue of TRI burden reduction.

- In a Feb. 13, 2004 email, Bromberg wrote to EPA officials crafting the TRI proposals, "We're very appreciative of your cooperation, and look forward to a fruitful partnership."
- An Oct. 6, 2004 email from Bromberg also conveys the level of influence SBA appears to have come to expect from EPA: "At a minimum, I should help EPA refine/tailor its presentation slides for the meeting." A meeting was held shortly after between Bromberg and EPA officials to discuss EPA's presentation at an upcoming stakeholder briefing on burden reduction.
- An Oct. 21, 2004 email from Bromberg to EPA Assistant Administrator Kim Nelson, considered the main architect of EPA's plans to cut TRI reporting, reads, "We've [EPA and SBA staff] been working closely together lately on TRI," to which Nelson responded, "The final product will be better with a partnership up front. Glad to hear things are progressing from your perspective."

The timeline for EPA's selection of TRI changes indicated by the documents also raises suspicion surrounding SBA influence.

- On Nov. 4, 2003 the EPA released its White Paper on the five burden reduction options being considered by the agency.

- On Feb. 4, 2004 EPA closed the public comment period on the Burden Reduction White Paper after having received hundreds of comments from stakeholder organizations and agencies opposing all of the options.
- Two months later, on April 15, 2004, the SBA sent EPA the 80-page report *Proposed Reforms to the Toxics Release Inventory Program: Streamlining Reporting and Preserving Data Integrity*. The report laid out SBA's case for its four most coveted TRI reporting cutbacks:
    1. Raising the general threshold for detailed reporting from 500 to 5,000 pounds;
    2. Allowing facilities to use the program's short form for Persistent Bioaccumulative Toxins (PBTs), like lead and mercury;
    3. Creating the ability for companies to file a no significant change report on the basis of having no major change in production; and
    4. Exempt petroleum and chemical wholesalers from reporting.
- At the National TRI Meeting, held Feb. 9 - 11, 2005, Kim Nelson announced that EPA was planning to allow companies to submit a simple "no significant change" report on the basis having no significant change in production rather than requiring the normal calculation of pollution amounts. Nelson also reported that other options would be included in the proposal.

  In a July 19, 2005 meeting with public interest groups, EPA officials announced that the agency would be pursuing three burden reduction changes which almost directly mirror the SBA changes:

    1. Raising the general threshold for detailed reporting from 500 to 5,000 pounds;
    2. Allowing up to 500 pounds of PBT disposals to be reported on the program's short form; and
    3. Creating the ability for companies to file a no significant change report every other year.
- On September 21, 2005, EPA officially proposed reductions in TRI reporting. The only major change was that EPA shifted from a "no significant change" report every other year to no report at all every other year. Apparently, EPA could not make a "no significant change" system work so that it would be valid and still achieve burden reduction so they substituted alternate year reporting.

In other words, SBA saw three of its four requests reflected in EPA's final proposal. Although the "no significant change" request--because of the infeasibility of its implementation--was ultimately changed to every other year reporting for all facilities. That all of these proposals were either opposed or not even mentioned by EPA during the earlier public comment period makes them particularly suspect. For instance, the option to allow facilities to report PBTs through the TRI program's short form was not even mentioned in EPA's original White Paper. It is also important to note that while the "no significant change" option was not included in EPA's final proposal, the agency initially pursued the option exactly as described in SBA's report, planning to allow companies to complete avoid calculating their pollution levels and instead qualify for the reporting loophole based on having no major change in production.

This is not the first time questions have been raised about SBA's influence over the TRI program. In April 1997, then-Senator Robert Torricelli (D-NJ) raised the similar questions, suggesting that SBA acted unethically in advocating against an EPA proposal to expand the TRI. In an April 8, 1997 letter to SBA, Torricelli called for an ethics investigation into whether Bromberg had "taken actions that aided his former clients and the lobbyists who now work for them in obtaining exemptions from the proposed TRI expansion."

Torricelli went on to write that Bromberg's actions "at best appear improper and inappropriate but may be unethical." The SBA's Inspector General removed Bromberg from SBA's work on the TRI-expansion proposal while conducting the requested investigation; the proposal, however, ultimately passed.

The public comment period on EPA's current TRI proposals closes on Jan. 13. To weigh in on EPA's plans to cut this cornerstone environmental right-to-know program, visit OMB Watch's TRI Action Alert site and send a message to EPA and Congress. To learn more about the proposals, visit OMB Watch's TRI Resource Center.

Concern Grows Over Unauthorized Domestic Spying

The Bush administration's acknowledgement of secret and unauthorized domestic spying since the 9/11 attacks has roiled both Republicans and Democrats in Congress. On Dec. 16, *The New York Times* reported President Bush authorized the National Security Agency (NSA) to eavesdrop on domestic phone calls and emails without a wiretapping warrant, kicking off a storm of protest just as renewal of the USA PATRIOT Act was being considered. OMB Watch responded to the unfolding events in a Dec. 20 statement. The following is a summary of major events since the *Times* story broke.

As news of the surveillance was reported, the president launched a full-scale defense of his actions. On Dec. 20, Vice President Dick Cheney said the president "was granted authority by the Congress to use all means necessary to take on the terrorists, and that's what we've done." The president spoke in national forums on the importance of protecting the American public in the aftermath of terrorist attacks, and acknowledged authorizing the domestic spying as one means for providing such protection.

On Dec. 22, Assistant Attorney General William Moschella sent a letter to Congress, providing a legal justification for the actions. The Moschella letter argues that the President has the authority to authorize the spying, and that it is in the national interest that the spying is conducted. The letter further argues that the inherent powers of the president as Commander in Chief, authorized under Article II of the Constitution, give him the power to protect the nation against attacks and that "[t]his constitutional authority includes the authority to order warrantless foreign intelligence surveillance within the United States..."

Moschella added that the congressional joint resolution passed in September 2001, called the Authorization for Use of Military Force (AUMF), provides additional authority for the presidential action. The AUMF gave the president the power to use "all necessary and appropriate force" against those responsible for the 9/11 terrorist attacks. According to Moschella, "The AUMF cannot be read as limited to authorizing the use of force against Afghanistan..." The Moschella letter assumes the definition of "force" includes domestic spying.

The next day former-Senate Minority Leader Tom Daschle, who helped negotiate the language of the AUMF, responded with an opinion piece in the *Washington Post*: "I can state categorically that the subject of warrantless wiretaps of American citizens never came up. I did not and never would have supported giving authority to the president for such wiretaps. I am also confident that the 98 senators who voted in favor of authorization of force against al Qaeda did not believe that they were also voting for warrantless domestic surveillance." Daschle added that more expansive language sought by the White House, which would have added a provision making clear that the president was grant power to act within the United States, was rejected.

Despite the White House legal justification, legal experts appeared unconvinced. Rather than face these criticisms, however, the White House has now shifted gears. On Dec. 30, the Justice Department announced it would investigate the leaks to the news media, particularly *The New York Times*, of information about the NSA spying program. The White House argued that the government employee(s) who leaked the information had threatened national security. Many have argued that such people are whistleblowers that should be protected under law. The White House, however, strongly disagrees. The Justice Department investigation is ongoing.

Debate over whether the president has the legal authority to authorize this extrajudicial eavesdropping has remained heated. On Jan. 6, the Congressional Research Service (CRS) provided Senators with a report questioning the legal justification provided by the administration. The 44-page memo stated, "It appears unlikely that a court would hold that Congress has expressly or impliedly authorized the NSA electronic surveillance operations here." They continued, saying the administration's legal justification is not "well-grounded."

The CRS authors argue that it is unlikely Bush can claim the broad presidential powers he has relied upon as authority to order the secret monitoring of emails and calls made by U.S. citizens. Congress expressly intended for the government to seek warrants from a special Foreign Intelligence Surveillance Court before engaging in such surveillance. The report also concluded that the AUMF does not appear to give Bush the authorization to eavesdrop, in order to detect and fight terrorists.

On Jan. 9, 14 prominent constitutional experts and former government officials reached a similar conclusion, arguing that the Bush administration lacks "any plausible legal authority" for the secret domestic spying. In a letter to Congress, they rejected the argument that the AUMF implicitly authorized warrantless domestic wiretapping. In addition, they rejected the argument that the president has inherent powers under Article II of the Constitution as Commander in Chief to act when Congress has provided express statutory requirements to get authority from a court established under the Foreign Intelligence Surveillance Act (FISA). Finally, the letter notes that warrantless domestic wiretapping raises serious questions under the Fourth Amendment, which deals with probable cause and warrants.

The signers include deans and former deans of prestigious law schools, a former director of the FBI, a former deputy attorney general, a former acting solicitor general, two lawyers who worked in the executive branch under President George H. W. Bush, and a prominent conservative scholar and fellow at the Hoover Institution.

Public opinion appears to be on the side of these legal experts. An AP-Ipsos poll conducted last week found 56 percent of Americans believe the government should be required to first get a court warrant to eavesdrop on the overseas calls and e-mails of U.S. citizens, even when those communications are believed to be tied to terrorism.

Sen. Arlen Specter (R-PA), the chair of the Judiciary Committee, has said he intends to hold hearings on the administration's actions and the legal justification for the secret authorization of wiretapping. Additionally, five members of the Senate Intelligence Committee, including GOP Sens. Olympia Snowe (ME) and Chuck Hagel (NE), have called for immediate inquiries.

FEC: No Exceptions for Charities to Electioneering Communications Rule

On December 21, the Federal Election Commission (FEC) voted to drop exemptions for 501(c)(3) nonprofits to Bipartisan Campaign Reform Act (BCRA) rules that restrict electioneering communications. The new rule eliminates exemptions for television, radio and cable advertisements that mention a federal candidate 30 days before a primary or 60 days before a general election paid for by charities and religious organizations, as well as "public service announcements," (PSAs) which are aired for free. The Supreme Court will hear oral arguments in a case challenging the constitutionality of the electioneering communications rule on Jan. 17.

The Commission, which voted unanimously for the new rule, stated in the "Justification and Explanation" section that public comments submitted did not demonstrate "to a reasonable certainty" that the Internal Revenue Code's restriction on political activity by 501(c)(3) organizations is sufficiently compatible with BCRA to allow the exemption. The many public comments addressing this issue lacked consensus. The Internal Revenue Service (IRS) also submitted comments making it clear that the tax code's phrase "promote or oppose candidates for Federal office" is not the same as BCRA's "promote, attack, support, oppose" (PASO) standard. Additionally, since no comments provided examples of broadcast ads by 501(c)(3) organizations that referred to a federal candidate or were aired during the 60/30 day blackout period, the Commission felt that the exemption was unnecessary.

The Commission removed the language "for a fee" from the definition of restricted publicly distributed communications, which brings PSAs under the electioneering communication rule. Many nonprofits submitted comments noting that they run PSAs mentioning federal candidates and that these PSAs could be run mistakenly during the blackout period. The Commission addressed the concern, suggesting nonprofits provide broadcasters with expiration dates for PSAs or notices not to air such PSAs during blackout dates. The Commission made clear that it would not hold a charity responsible if an ad was run mistakenly.

Background

BCRA outlawed corporate, including nonprofit, and union funding for TV and radio messages mentioning federal candidates that are aired 60 days before a general election or 30 days before a primary; however, BCRA allowed the FEC latitude in creating necessary exemptions. In 2003 the FEC approved an exemption for 501(c)(3) organizations from the "electioneering communications" rule, because 501(c)(3) organizations are prohibited from electioneering under the Internal Revenue Code.

The new rulemaking came in response to a federal court order to reconsider the exemption, after the court found that the FEC had not adequately justified it. The FEC appealed the ruling, but on Oct. 24 the U.S. Circuit Court for the District of Columbia rejected the FEC's request for full court review of the decision.

The new restrictions will apply to all advertising aired during the blackout period of the 2006 U.S. congressional election cycle. The FEC will also watch the U.S. Supreme Court, which will hear arguments on Jan. 17 in *Wisconsin Right to Life vs. FEC*, involving electioneering communications provisions under BCRA. The case was brought by a Wisconsin anti-abortion group arguing that its ads on judicial selection issues, aired before the 2004 elections and referencing Sen. Russ Feingold (D-WI), were grassroots lobbying and should be exempted from the electioneering communications provision. OMB Watch and other nonprofits have filed a friend of the court brief in support of Wisconsin Right to Life.

More Government Spying on Nonprofits Revealed

New documents released to the press in December 2005 show federal agencies have been infiltrating and conducting surveillance on a wide range of nonprofits, in what appears to be a policy of treating lawful dissent as an act of terrorism. An NBC story revealed that the Pentagon has used a program meant to protect U.S. military installations, in order to spy on peace and other groups. In addition, FBI files released as part of a lawsuit filed by the American Civil Liberties Union (ACLU) in December 2004 show investigations of groups concerned with everything from poverty relief to the environment.

On Dec. 14, 2005 NBC published a story based on a 400-page Dept. of Defense (DOD) document that lists more than 1,500 "suspicious incidents" from the previous year. These included a number of peaceful nonprofit activities, such as a Fort Worth, FL Quaker group planning a protest of military recruitment in area high schools. The DOD document referenced over four dozen anti-war meetings and protests. DOD deemed 24 of these incidents as no threat to national security, but did not delete them from its Talon database.

The information in Talon is sent to the Counterintelligence Field Activity agency (CIFA), whose secrecy has troubled some members of Congress. Rep. Jane Harmon (D-CA), ranking member of the House Intelligence Committee, has raised concerns with CIFA and met with committee chair Pete Hoekstra (R-MI) regarding those concerns. However, the details of that meeting were not made public.

After it came to light that Talon had been used to monitor peaceful groups, the Pentagon ordered a review of the program. *The Washington Post* reported on Dec. 15, 2005 that the Pentagon's preliminary review concluded the Talon database had not been maintained correctly, quoting a senior official, who explained, "You can also make the argument that these things should never have been put in the database in the first place until they were confirmed as threats." The DOD surveillance, however, does not appear to have been inadvertent. A DOD briefing document, cited in the NBC story, indicated a policy of surveillance of protest groups, stating, "We have noted increased communication and encouragement between protest groups using the Internet..."

The FBI's use of Joint Terrorism Task Force (JTTF) resources to spy on domestic groups engaging in peaceful protest has come to light through litigation filed by the ACLU. OMB Watch reported on several instances of surveillance of peace, civil rights and environmental groups last year, based on documents obtained by the ACLU through the Freedom of Information Act. (See FBI Documents Reveal Further Spying on Peace, Civil Rights Groups, *OMB Watcher* [Sept. 6, 2005].)

Similar incidents were revealed in Dec. 2005. First, the ACLU of Colorado announced release of documents showing the FBI had tracked the names and license plate numbers of people that attended a protest at the North American Wholesale Lumber Association's convention in Colorado Springs in June 2002. The documents released to the ACLU showed that JTTF recommended a domestic terrorism investigation of people planning to participate in a training on nonviolent protest.

The Colorado documents also revealed a FBI investigation of the Colorado Campaign for Middle East Peace, because the group's website promoted a Feb. 2003 anti-war demonstration in Colorado Springs. According to the ACLU report, the FBI conducted surveillance of a car pool meeting place for people attending the event. Of the incidents, ACLU of Colorado Legal Director Mark Silverstein explained, "The FBI is unjustifiably treating nonviolent public protest as though it were domestic terrorism. The FBI's misplaced priorities threaten to deter legitimate

criticism of government policy while wasting taxpayer resources that should be directed to investigating real terrorists."

Still more ACLU documents were released later that month. The *New York Times* reported that over 2,300 pages of FBI material revealed surveillance of a wide variety of groups, including the Indianapolis Vegan Project, the antipoverty group Catholic Workers, Greenpeace, and People for the Ethical Treatment of Animals. The documents showed that, in addition to surveillance, the FBI has used informants within targeted groups to collect information.

The FBI countered that it does not target organizations because of their beliefs. Ann Beson, ACLU associate legal director, however, argues the Bush administration "has engaged every possible agency, from the Pentagon to NSA to the FBI, to engage in spying on Americans," calling the current climate reminiscent of "the days of J. Edgar Hoover."

IRS Clears Florida Church of Partisan Activity Accusation

An IRS investigation of a Florida church has found there was no partisan political activity when candidates attended and appeared at services during the 2004 election season.

In late Dec. 2005 the IRS told Guy Lewis, the attorney for Friendship Missionary Baptist Church, that the case would be closed and resolved favorably for the church.

The inquiry was prompted by an Oct. 13, 2004, request to the IRS by the watchdog group Americans United for Separation of Church and State (Americans United) to investigate an October 2004 appearance at a service by Democratic presidential candidate Sen. John Kerry (D-MA). In a 10-page letter to the church, the IRS wrote, "a reasonable belief exists that [the church] engaged in political activities that could jeopardize its tax-exempt status as a church." Included with the letter was a 21-question inquiry into the pastor's alleged endorsement of Kerry, coordination with the Kerry campaign, and solicitation of contributions.

Federal tax law prohibits all 501(c)(3) organizations, including churches, from intervening in political campaigns. According to the Internal Revenue Code, they may not "participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or opposition to any candidate for public office." The prohibition has been interpreted very broadly in order to prevent charities from using tax-deductible contributions for electioneering, which would result in a taxpayer subsidy for campaigns.

The church defended its actions by explaining services are open to all, regardless of religious or partisan affiliation. The church did not invite Kerry to the Palm Sunday service, but "[B]ecause the church is in a highly accessible location for Liberty City citizens to gather conveniently, community leaders frequently attend Sunday services and ask to be recognized," according to letters from Lewis to IRS investigators last year. Lewis also pointed out that Miami-Dade County Mayor Carlos Alvarez, a Republican, had made an appearance at the church just one week before Kerry's.

Lewis told *The Miami Herald*, "Friendship did nothing more or less than other churches do on a regular basis. They didn't go out and raise money for any candidate. The preacher never told his congregation how to vote, never told them to give money to any particular side, never allowed congregants to have an after-service rally. I'm glad the IRS rightfully looked at this and said this

church was a church. They are not a political organization. They are not dedicated to promoting politics."

The church has reduced their formal policy regarding candidate appearances to writing, which helped convince the IRS that there was no attempt to favor one candidate over another.

Abramoff Plea Brings New Lobby Reform Bills

With the recent plea bargain made by high-powered lobbyist Jack Abramoff, federal lobbying reform bills have gained momentum in Congress, with Democrats and Republicans vying to lead the pack and shake the "Abramoff taint" in time for re-election.

Republican and Democratic leaders in both chambers are preparing to introduce reforms. Senate Majority Leader Bill Frist (R-TN) asked Sen. Rick Santorum (R-PA) just after last Thanksgiving to develop proposals for lobby reform. And House Speaker Dennis Hastert (R-IL) has asked his lieutenants, led by Rep. David Drier (R-CA), to develop similar legislation.

Similarly, a number of lobbying reform bills had already been introduced at the end of last year. Sen. John McCain (R-AZ)--in the Senate--and Rep. Christopher Shays (R-CT)--in the House--have introduced a bill with a host of reforms. A similar, albeit even more detailed, bill was introduced by Sen. Russ Feingold (D-WI). Finally, Reps. Marty Meehan (D-MA) and Rahm Emmanuel (D-IL) introduced similar legislation in the House. Since January, House Democrats have widely backed a recent "good government" bill sponsored by Rep. David Obey (D-WI) that also makes changes to House lobbying rules. These bills generally address campaign contributions, travel, gifts, lobbyist disclosure, and the revolving door between K Street lobbying firms and Congress.

On Dec. 16, McCain introduced S. 2128, the Lobbying Transparency and Accountability Act of 2005. (Shays introduced the same bill in the House.) The legislation was crafted in the aftermath of Indian Affairs Committee hearings that revealed malfeasances by Abramoff in his dealings with Indian tribes, and means to address the problems brought to light by Abramoff's unethical actions: securing large campaign contributions from clients; arranging for and hosting fundraisers; paying for foreign travel; providing gifts through his restaurant's expensive meals; offering personal skyboxes at sporting events; offering lobbying jobs to officials and staff; employing politicians' spouses; setting up a grassroots lobbying operation to collect tens of millions in fees and kickbacks from Indian gaming tribes; and laundering money through a charity to pay lobbyists to influence policy.

Lobby Disclosure: Current Law

Currently, organizations are required to register, under the Lobby Disclosure Act, if its employee/lobbyists meet two conditions:

- The organization must have one or more compensated employee who engage in federal "lobbying." LDA defines "lobbying" as more than one "lobbying contact" by a person who spends at least 20 percent of her time on "lobbying activities" over a 6-month period. A "lobbying contact" is currently defined as an "oral or written communication to a covered official with respect to the formulation, modification or adoption of a law or regulation." The definition of a "lobbying activity" currently includes "lobbying contacts" and activities in support of lobbying contacts.

- An organization must spend, in total expenses for its lobbying activities, $24,500 in a 6-month period. This also includes money spent on outside lobbyists.

Organizations meeting the criteria above are required to file semi-annual reports identifying the lobbyist/s, clients and employers, and the issues discussed in "lobbying contacts."

The provisions of the LDA currently cover only activities described as "direct lobbying," omitting any reference to "grassroots lobbying." Direct lobbying covers communication between the lobbyist and officials and their staff who are subject to the law. Grassroots lobbying is defined in tax law as a "call to action," such as an action alert sent to the general public. Organizations that only engages in grassroots lobbying are not covered by the LDA.

Nonprofits that use the lobbying expenditure test under Section 501(h) of the Internal Revenue Code have the option, under the LDA, to use the IRS Form 990 definitions on their LDA reporting forms. This is because Form 990 requires charities to disclose direct and grassroots lobbying expenditures at the federal, state and local level under IRS definitions, which saves charities from needing to calculate under a different standard. The IRS definitions are far more extensive than LDA requirements.

Proposals for Reform: Grassroots Lobbying

Under McCain's legislation (S. 2128), the definition of lobbyist is altered to include grassroots lobbying, which the bill defines as any attempt to influence the general public, in order to encourage them to engage in lobbying contacts. It excludes any communications to organizations' members, employees, officers or shareholders, unless such grassroots lobbying is done by a paid outside lobbyist. However, neither the LDA nor S. 2128 defines who constitutes a "member." Form 990 filers could ostensibly continue to use the IRS definition of member. Under IRS regulation 56.4911-5, a member is defined as someone that contributes more than a nominal amount of time or money to the organization. Other nonprofits could possibly use their organizations' definition of membership, if membership has been so defined it in the organizational by-laws. For nonprofits using the IRS Form 990 definition on their LDA reporting forms, it would not make much difference, as communications with members are already treated as a direct lobby expense.

H.R. 2412, the Special Interest Lobbying and Ethics Accountability Act (SILEA), introduced by Meehan last year, also includes a grassroots lobbying disclosure provision. The legislation would require lobbyists that meet the LDA threshold (based on direct lobbying expenses only) to disclose amounts spent on grassroots lobbying. Fewer nonprofits would, therefore, fall under the LDA because their grassroots lobbying expenses would not push them over the threshold amount. A similar provision was included in S. 1398, a lobby reform bill proposed by Feingold.

McCain's legislation also increases the frequency of required reporting from semi-annual to quarterly. The bill also adjusts the reporting threshold accordingly, from $24, 500 for a six-month period to $10,000 for three months, which will be adjusted for inflation annually. This change could bring nonprofits not currently required to register over the LDA registration and reporting threshold if they have a quarter in which they are particularly active.

Some nonprofits are concerned that the requirement would chill nonprofit speech, due to the increased financial burdens that come with increased reporting requirements. An increase in cost may preclude small nonprofits from engaging in federal lobbying activities. Proponents of grassroots disclosure argue increased disclosure will deter some lobbyists and clients from improper activities and expose sham nonprofits that operate as fronts for private corporate interests.

Campaign Contributions

After the Abramoff indictment, members of Congress rushed to give back campaign contributions linked to the fallen super-lobbyist or the Indian tribes he represented. Abramoff made or arranged about $4.5 million in campaign contributions to officeholders and party committees since 2000. McCain's bill would not prohibit campaign contributions from lobbyists, but require disclosure on lobbyists' LDA forms, as well as candidates' Federal Election Commission (FEC) forms. Currently, lobbyists are subject to the same $2,100 per election contribution limit as all other individuals. However, contributions are reported to the FEC, and are not part of disclosure reports filed by lobbyists with the Senate or House. Additionally, no restrictions are currently in place on organizing fundraising events. Under McCain's bill, lobbyists and lobbying firms would be required to report dates, total funds raised and recipients of funds at fundraising events, although there would not be an outright prohibition.

Travel

Currently, congressional rules prohibit lobbyists from paying for travel for members of Congress and their staff, although lobbyists may arrange travel and have their clients pay for it. Travel expenses for members of Congress and their staff can be paid for by corporations, and the sponsor and cost of travel must be reported shortly after the event on annual personal financial disclosure forms.

All of the pending lobby reform bills have dealt with the issue of travel, a response, no doubt, to Abramoff's travel junkets with lavish accommodations and recreation for members of Congress and staff that have come to light.

McCain's legislation does not prohibit paid travel outright, but instead requires disclosure of travel paid for by clients of, or arranged by, lobbyists--but does not require disclosure when the travel is paid for or arranged by corporate presidents or CEOs. Both the Meehan bill and the Feingold bills prohibit lobbyists from paying or arranging for travel, but again, do not ban travel paid for by presidents or CEOs of corporations. Feingold's bill is the only one that prohibits lobbyists from accompanying members on a trip.

Additionally, the McCain, Feingold and Meehan bills all subject travel expenses of members and staff to the per diem rates that apply to all other government workers.

Obey's reform legislation takes a harder stance on sponsored travel. It would require House members and staff to file a declaration stating that, among other things, the sponsor of the travel did not conduct lobbying activities as defined in section 501 of the Internal Revenue Code. Consequently, any charity that conducts any lobbying activities would be banned from sponsoring travel--such as travel to conferences or environmental and educational sites. While such nonprofits can legally pay for trips for members of Congress and staff, congressional rules forbid registered lobbyists or registered agents from paying for such travel themselves.

Gifts

Currently, congressional rules cap gifts at $50 per item and $100 per year from any individual to a member of Congress and her staff. The term "gift" covers any gratuity, favor, discount, entertainment, hospitality, loan, or other item having monetary value. In particular, the term includes services, training, transportation, lodging and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. A member or employee of Congress may accept a gift only if it is unsolicited and there is no presumption that it is in exchange for influencing a member's governmental duties.

Valuing gifts, such as tickets to sporting events, has become an art form to keep the price within the requirements on gift restrictions.

Both Meehan's and Feingold's legislation ban gifts to members and staff outright, regardless of value. McCain's bill requires reporting any gift larger than $20 and valuing sports tickets, a common commodity for lobbyists, at their face value.

Electronic Filing

According to the LDA, lobby disclosure forms must be made available for public inspection and copying at reasonable times. Both the Senate and House Clerk's office accepts--and now the House requires--electronic forms.

The McCain, Meehan and Feingold bills all require electronic filing. Currently, LDA reports have limited utility because of their lack of timeliness and searchability. The semi-annual reports are often filed after lobbying on a specific bill has been completed, limiting access to information on the amounts spent on specific legislative battles. Mandatory e-filing would eliminate the lag time in data entry for the House and Senate Clerk's office. In an effort to increase transparency, McCain's bill also requires the information be available not more than 48 hours after a report is filed.

Enforcement

Who will enforce these laws if passed? Currently, federal lobbyists that meet a set threshold must report their activities to the Clerk of the House and Senate Offices in the form of semi-annual reports. Neither the Senate nor House Clerk's Office has formal enforcement authority. They are required, under Sec. 10 of the LDA to review, verify, and request corrections in writing to ensure the accuracy, completeness, and timeliness of registrations filed under the Act. The office of the U.S. Attorney for the District of Columbia receives referrals from the Secretary of the Senate and Clerk of the House of Representative's Office. The U.S. Attorney's Office then makes a determination to pursue the "most egregious" cases. Penalties are imposed on a person who "knowingly fails to (1) remedy a defective filing within 60 days after notice of such a defect by the [Senate Secretary or House Clerk's Office] or (2) comply with any other provision of the Act." Penalties involve a civil fine of not more than $50,000.

McCain's legislation increases fine to not more than $100,000 and directs the Comptroller General to review the activities of the Senate and House Clerks' office and report twice yearly to Congress on the levels of compliance and whether the Clerks' office has enough resources. Similar provisions within the Meehan bill require the General Accounting Office to report twice annually to Congress on the effectiveness of the Clerk's office.

Documents released by the Department of Justice (DOJ) provide a window into the world of LDA reporting. Reportedly, over the past two years, the U.S. Attorney's Office has received about 200 referrals of possible LDA violators and pursued 13 cases. What factors led the U.S. Attorney's Office to pursue these cases are unknown. Pam Gavin, superintendent of the Senate Office of Public Records, which oversees the LDA in the Secretary's Office, told *Roll Call* that, "[f]rom my perspective, I think it's working pretty well. Anybody in the world can go to our Web site and look at lobbying reports and see what's being done."

However, details about enforcement activities can be difficult to track down. The LDA is mute on the issue of public disclosure of violations. Gavin's office has never made public the number of LDA-related referrals it has made to the U.S. attorney's office, much less any details about

individual cases. Consequently, it would be difficult to make a clear determination of whether the current law is effective or if adequate enforcement exists.

What's Next?

Reportedly, despite the wide support of the Obey plan, House and Senate Democratic leaders plan to unveil additional extensive lobbying reform proposals later this month. Similar to the legislation discuss above, the proposals would extend the prohibition on lobbying of Congress by former lawmakers and staff members from one to two years, eliminate floor privileges for former members who are registered lobbyists, and place new limits on gifts and congressional travel. New approaches to penalties for violations are reportedly also being considered.

The Republicans are also moving ahead with more lobby reform proposals. It is not clear what will be in the Senate GOP leadership plan. It has been reported that the plan will differ from the McCain bill, but it is unclear in what way. In the House, Hastert has said that he intends to move quickly and in a bipartisan manner on reform legislation. With Democrats seeking to capitalize on GOP ties to Abramoff, however, a bipartisan bill emerging quickly seems unlikely.

White House 'Guidance' to Burden Agencies, Delay Information

A White House proposal will hinder federal agency efforts to provide important information to the public by opening guidance documents to politicization and industry influence, according to comments filed by Citizens for Sensible Safeguards on Jan. 9.

Citizens for Sensible Safeguards, a coalition of labor, consumer, and other public interest organizations, filed comments on OMB's Proposed Bulletin on Good Guidance Practices. The bulletin purports to make agency guidance documents "more transparent, consistent, and accountable" by setting new requirements that include high-level review by senior agency staff of any guidance document deemed "significant" and a lengthy review and approval process for any "economically significant" guidance.

A Solution in Search of a Problem

The bulletin does not solve the problem OMB claims it is addressing. While OMB makes the dubious claim that the bulletin is needed because agencies are announcing new requirements in guidance documents instead of regulations, the administration fails to recognize the burdensome analytical requirements that force agencies to seek alternatives to the rulemaking process via the issuance of guidance. OMB should focus its efforts on removing obstacles to the regulatory process instead of making guidance as burdensome and draining on agency resources as the rulemaking process has become. Onerous requirements created by recent legislation and executive orders have led to "paralysis by analysis." For example, the promulgation of a new OSHA regulation now takes on average over five years, whereas in the 1970s the process took roughly six months.

Making Government *Less* Effective

OMB's proposal also takes a "one-size-fits-all" approach to the vast array of agency documents that address wide ranging public needs. The White House's proposal uses such amorphous definitions that an enormous range of agency information could be at risk. The bulletin could apply to everything from handbooks to advisory opinions to databases of chemical information.

National Weather Service heat advisories, Superfund cleanup instructions, Labor Department guidelines for biohazardous shipment labeling and even USDA recommendations about when meat is done and ready to eat could now face new bureaucratic burdens.

White House Power Grab

The proposal's requirement that so-called "economically significant" guidance documents be subject to a lengthy public comment process represents a White House power grab that contradicts Congress's role in delegating discretion to federal agencies. Despite having had 60 years to consider across-the-board, one-size-fits-all policies of the type proposed by OMB, Congress has chosen to avoid such policy proposals. By requiring agencies to seek approval from OMB to avoid these onerous new requirements, OMB's proposal also opens the door for an unprecedented role for the White House in agency's development of guidance.

Though put forth under the auspices of increasing public participation and transparency in the guidance process, OMB's proposal will have the opposite effect; swamping agencies in new requirements that drain agency resources and limit their ability to respond effectively to the needs of the public.

There's a Better Way

If OMB continues to go forward with the proposal, it should consider several revisions that could limit the burdens on agency resources, bolster public participation and agency responsiveness and keep the balance of powers in check. Suggestions for reform include the following:

- "Economically significant" guidance should not be subject to notice-and-comment requirements. Not only is the term "economically significant guidance" misleading and incomprehensible, but the added burden on agencies for guidance documents that fall under this domain would be onerous and draining on agency resources. Guidance documents are specifically exempt from APA notice-and-comment, and subjecting them to such procedures is an overreach of executive power.
- OMB should vastly limit the scope of guidance documents requiring formal notice and comment so as not to grind agency activity to a complete halt.
- In the interest of transparency, any criteria OMB uses to approve or deny the waiver as well as any rationale provided by the agency for waiving the good guidance practice requirements should be made public on the OMB website.

White House Proposes Guidelines to Control Agency Risk Assessments

When it rains, it pours: the same day the White House closed the comment period on its proposed bulletin to govern agency guidance practices, the White House Office of Management and Budget released a proposed bulletin to govern agency risk assessments.

OMB's Office of Information and Regulatory Affairs (OIRA) released the Proposed Risk Assessment Bulletin on Jan. 9. It will be peer-reviewed by the National Academies of the Sciences and open to public comment through June 15.

OMB Watch will make more information and analysis available at www.ombwatch.org/regs/whitehouse/risk going forward. For now, here are some of the highlights of the bulletin:

- It calls on agencies to apply, where feasible, the risk assessment standards of the Safe Drinking Water Act.
- It gestures in the direction of risk/risk comparison, calling on agencies to write introductions that put the risks they are assessing in the context of other risks with which the public is familiar. Before becoming OIRA administrator, John Graham vigorously advocated a concept of risk/risk tradeoffs as a means of characterizing regulatory policy as irrational. With this approach, Graham once downplayed health risks associated with dioxin, the primary toxin found in Agent Orange, as "on par with other risks."
- The bulletin would apply heightened standards to "influential risk assessments," a new category that parallels the influential information category from OMB's peer review guidelines. New standards would include "substantial[] reproduc[ibility]," comparison against non-agency risk assessments, more emphasis on uncertainty and central tendency in risk ranges, formal response to "significant" comments, incorporating scientific disputes over the adverse or non-adverse nature of human health effects, and more.

Many of the issues now at stake in the risk assessment bulletin were discussed back in 2001 in an insightful report from Public Citizen called *Safeguards at Risk*. Published when John Graham was nominated to head OIRA, the report tracks the relationship of corporate special interest money and the cottage industry of aggressive manipulations of the discourse of risk toward anti-regulatory ends.

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Risk Bulletin Advances Graham Anti-Reg Agenda

From cost-benefit guidelines to the new draft policy on risk assessments, White House regulatory czar John Graham has steadily proceeded with a long-range plan laying the groundwork for dramatic limits on public safeguards.

In light of this long-range agenda, the White House's recent Proposed Risk Assessment Bulletin, already problematic in its own right, is also troubling as the latest element in a sequence of policy changes designed to undermine protective policies by making regulatory league tables possible.

Endgame: Rationing Regulatory Protections Through League Tables

Graham is a champion of anti-regulatory league tables. Long before his tenure in the Bush administration, Graham advocated (misleadingly) the use of tables that, like league standings charts in the newspaper sports page, would rank regulatory protections according to cost-effectiveness ratios.

Graham's position has long been that such tables could be the basis for selecting among potential regulatory protections. In the FY 03 budget submission, Graham reiterated that position. Graham cautioned that the dream of using league tables for interagency comparisons of regulations "depends

on achieving a degree of analytical consistency across agency evaluations of health and safety risks" -- that is, to have interagency consistency of the "data" that would be plugged into such tables.

Regulatory Budgeting

One use of league tables would be in regulatory "budgeting," an industry dream policy that would limit the fictional compliance costs that an agency is allowed to impose through new regulations in any given year. Once an agency hits its pseudo-budget cap for compliance costs, it would be forbidden from promulgating any new protective standards.

Risk/Risk Comparisons

Another use for league tables would be as a decision-making tool that supplants precautionary approaches with risk-vs.-risk tradeoffs. As Graham explained the approach in OMB's 2003 regulatory accounting report, precautionary regulation supposedly creates new risks of its own:

For example, regulations that reduce the level of disinfection byproducts in the water supply may reduce potential adverse health effects from by-products of the disinfection process. However, it may also reduce the effectiveness of disinfection and thereby increase the health risk from microorganisms. Likewise, restricting latex use to prevent allergic reaction in health care workers may increase the risk of infections that latex products are used to prevent.

Having slickly shifted the conversation away from polluters and other corporate malfeasors and onto regulatory protections themselves, Graham thus co-opted precautionary discourse and turned it into a basis for new analytical limitations: "Therefore, precaution may be necessary on both sides of the equation and a formal consideration of risk-risk trade-off may be necessary when both risks cannot be easily reduced in tandem." League tables make such "risk-risk trade-off[s]" possible.

The Graham Agenda

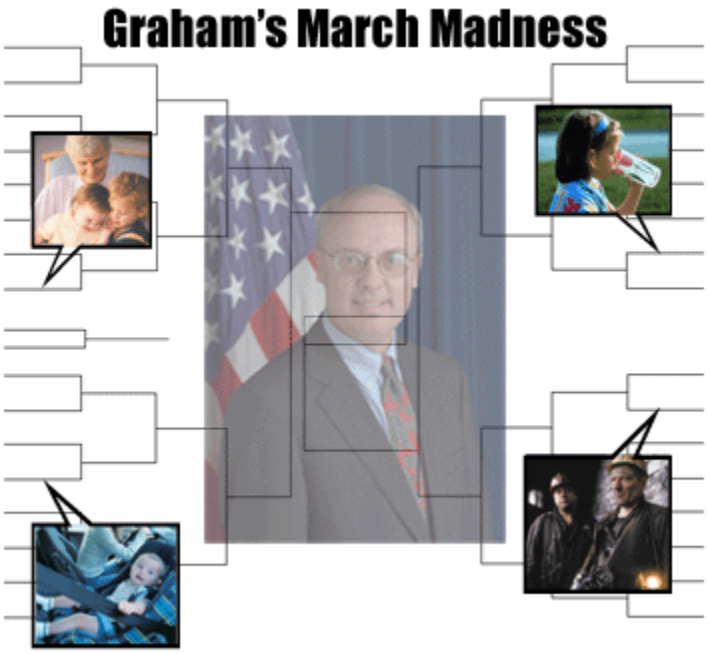
Ever since explaining the agenda in 2002, Graham has been working incrementally to make league tables possible:

- His first move was mandating consistency in cost-benefit analysis and requiring that agencies conduct cost-effectiveness analyses.
- His most recent move was the Jan. 9 release of the Proposed Risk Assessment Bulletin. Graham signaled his intention to systematize risk assessment information four years ago in the 2002 annual regulatory accounting report, in which he called for both (1) the application of Safe Drinking Water Act risk assessment standards to all assessments and (2) "methods of risk assessment that supply central estimates of risk as well as upper and lower bounds on the true yet unknown risks." The latter is particularly important for league tables: risk assessments typically report ranges of risk probabilities, but league tables need a single risk figure in order to produce clear rankings. The new proposed risk assessment bulletin now advances both goals announced in 2002.
- The same week that the proposed risk bulletin was released, the National Academies of Sciences' Institute on Medicine released a White House-commissioned report on measuring health benefits for use in cost-effectiveness analysis. The NAS report now serves as an authoritative commentary agreeing with what could likely be next from Graham: a new guideline mandating greater consistency in the use of mortality and morbidity measures, such

as a quality-adjusted life years, in cost-effectiveness analysis. Such a policy would be the final step needed to establish consistent analytical approaches that, in turn, will make league tables possible.

More about league tables:

- Richard W. Parker, Grading the Government: How Reliable are the Tests?
- Lisa Heinzerling, Five Hundred Life-Saving Interventions and Their Misuse in the Debate Over Regulatory Reform
- Lisa Heinzerling & Frank Ackerman, The Humbugs of the Anti-Regulatory Movement
- Lisa Heinzerling, The Perils of Precision
- Lisa Heinzerling, Reductionist Regulatory Reform



Reform Must Illuminate Channels of Money, Influence

Both Republican and Democratic lawmakers have proposed principles and introduced legislation to purge the excessive influence of lobbyists in Washington, since corruption scandals highlighted the inappropriately cozy relationship between Capitol Hill and K Street. Neither party, however, appears to be making full use of one the best weapons against corruption and abuses of power--sunlight. Reform proposals would all be strengthened with more comprehensive use of the tools of transparency.

A wave of proposals have come out of Washington in recent days. Senate Minority Leader Harry Reid (D-NV) and 34 other Democrats introduced the Honest Leadership and Open Government Act of 2006 (S. 2180) on Jan. 20, For his part, Sen. John McCain (R-AZ) has been rounding up support for his Lobbying Transparency and Accountability Act of 2005 introduced last December.

At a Jan. 17 press conference on lobbying reform held by Republican congressional leaders, House Speaker Dennis Hastert (R-IL) voiced support for a ban on privately sponsored travel and stricter gift-giving rules.

Unfortunately, none of the reform proposals to date offer a meaningful answer to the problem of enforcing the rules (both existing and proposed) and none create the transparency that the system so desperately needs and that could be the best corruption deterrent around. The Senate Democrats propose new criminal penalties for non-compliance, but nothing to ensure enforcement of the new penalties. And, while the Democrats plan would require that lobby disclosure information be available in a searchable online database, it stops short of meaningfully opening government.

Reform proposals will fail to make a dent in Washington's culture of corruption without the following key elements to improve transparency:

- A one-stop centralized database on key monetary activities between government and the private sector
- Public disclosure of outside job negotiations
- Improved access to conference committee activities
- Stronger investigative and enforcement mechanisms for disclosure requirements

Some of these elements are included in legislation already introduced, but if Congress is to impede the corrupting influence of lobbyist money, it is essential that transparency and openness play a central role in the reform package.

Centralized database on lobbying activity

Since there is no easy way to eliminate money from politics, proposals must eliminate the ability to hide the money. The Honest Leadership and Open Government Act of 2006 expands disclosure requirements for lobbying activities to include who is funding lobbying firms, paying for travel, gifts, and who is making campaign contributions to individuals, PACs, and party committees. All of this information would be available to the public in a searchable database. This is a significant step forward, but because it would only apply to those required to register under the Lobby Disclosure Act, it would shed light on only a portion of the money that flows in and out of Washington. Money would likely shift to other less scrutinized avenues.

A serious lobby reform package should include an effort to bring together in a meaningful way information about government contracts, political contributions from non-lobbyists, earmarks in appropriations bills and more. Legislation should also require members of Congress to maintain and submit information on donations, trips, gifts and other transactions. Such data could be cross-checked with lobbyists' disclosures to help identify inconsistencies and inappropriate activities. Members of Congress should also be required to maintain data on such transaction on their official websites. Without improved tracking of the flow of money in and out of government, a solution to the corruption that plagues politics will continue to elude us.

Public disclosure of outside job negotiations

Much of the current ethics scandals centers around accusations that government officials and employees have swapped political influence for private sector jobs. The Honest Leadership and Open Government Act "requires lawmakers to disclose when they are negotiating private sector

jobs, and requires Executive Branch officials who are negotiating private sector jobs to receive approval from the independent Office of Government Ethics."

While we applaud the disclosure requirement of lawmakers, we believe it should be extended to Executive Branch officials. Obviously, individual privacy and the sensitive nature of job negotiations are concerns, but disclosure of Office of Government Ethics approval for such negotiation after a reasonable time period, say 6 months or a year, seems reasonable enough. Concerns have been raised that obtain such permission is too easy. Public disclosure would enable lawmakers and the public to determine if a pattern of laxity exists or if the internal system monitoring such negotiations is flawed.

Improve access to conference committee activities

Lawmakers who sit on conference committees wield enormous power in our political process, in some instances making last-minute changes to legislation without the support or knowledge of other members of Congress. To ensure oversight and accountability of lawmakers during the introduction and initial crafting of a bill, conference committee negotiations should be made transparent and all committee members should vote on any changes to the bill. The Honest Leadership and Open Government Act would enact these changes and would additionally require the public release of conference reports 24 hours before the committee begins their consideration.

OMB Watch believes that the Act should also include a provision requiring committees to release the text of bill markups as well as other committee documents such as draft bills and amendments prior to voting. Access to such information is essential for meaningful public accountability over conference committee activities.

Investigative and enforcement mechanisms

All the various provisions and requirements proposed will have little effect if reform legislation does not establish some form of oversight authority to ensure the requirements are met and to investigate malfeasances. The Honest Leadership and Open Government Act would create the Senate Office of Public Integrity to receive lobbyist disclosures and investigate possible violations.

Lobbyists, however, are only part of the equation. In addition to the disclosure requirements on members of Congress, OMB Watch believes that any office or agency charged with overseeing lobby disclosure requirements should also be granted the authority to enforce congressional disclosure requirements, such as the requirement of lawmakers to maintain data on their travel, gifts and donations on the member's website. Additionally, legislation should authorize any such oversight entity to use enforcement mechanisms, including public notice of violations and even fines on congressional offices that fail to meet disclosure requirements.

In the coming weeks, the House and Senate will act on reform packages to infuse public oversight and accountability into the relationship between lobbyists and lawmakers. Including the elements outlined above would enormous benefit reform legislation and its ability to bring about needed change.

EPA Gets an Earful on Plan to Reduce Toxic Reporting

More than 70,000 citizens voiced opposition to the Environmental Protection Agency's (EPA) proposals to cut chemical reporting under the Toxics Release Inventory (TRI), during the agency's public comment period that ended Jan. 13. Those speaking out against EPA's proposals included state agencies, health professionals, scientists, environmentalists, labor, Attorneys General, and even Congress, all of whom raised substantive concerns with the plan.

A first look at the comments submitted on EPA's proposed rule to change the threshold for detailed reporting shows extensive opposition and little support for the agency's plans.

Reps. Frank Pallone (D-NJ), Hilda Solis (D-CA) and Luis Gutierrez (D-IL) coordinated a letter signed by over 50 members of the U.S. House of Representatives urging EPA to "immediately withdraw [the] proposed changes to TRI requirements." As previously reported, members of both the Senate and House have written EPA expressing their misgivings about the proposed changes.

Twelve state Attorneys General submitted detailed comments suggesting that EPA lacks authority to finalize the proposals and that the current EPA plans violate several laws. "In addition to being contrary to the public interest and sound policy," their comments explain, "the proposed changes would violate the Emergency Planning and Community Right-to-Know Act (EPCRA), the Pollution Prevention Act (PPA), and the Administrative Procedure Act (APA)." The comments were submitted by the attorney general offices of New York, California, Connecticut, Illinois, Iowa, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, Vermont, and Wisconsin.

Maine's Department of Environmental Conservation also questioned the legality of EPA's proposals and expressed fear that the proposals would inflict significant harm on Maine's 'toxic reduction' program. According to the agency's comments, "Such a change inherently conflicts with the intent of the Community Right to Know Act and the goals of the TRI program. Furthermore, because Maine has a Toxics Reduction Program centered on public accountability, this proposal would significantly curtail what the public can review." Maine, according to the comments, would lose almost 70 percent of its TRI inventory and the ability to track 70 percent of Toxic Release data in the state.

Joseph A. Gardella, Jr., Ph.D., an award-winning chemist and professor with the University of Buffalo, in comments submitted to EPA, strongly opposed the changes. Gardella, who works to forge partnerships between industrial facilities and exposed communities to foster pollution prevention and remediation, wrote, "[f]or almost 20 years, the TRI program has been successful in making communities around the country safer and healthier by providing critical information on the toxic chemicals released into our land, water, and air... [EPA's proposal] poses a significant threat to our nation's health, safety, and environmental quality."

OMB Watch submitted extensive comments detailing the numerous problems and shortcomings of EPA's plans. As did many other comments, the organization highlighted the fact that "EPA's proposed changes would greatly reduce the amount of information available to communities, state officials, first responders, and health professionals on the releases and disposals of toxic chemicals, which pose significant health risks to workers and the general public." OMB Watch urged the agency to withdraw the proposals and begin the process of identifying changes that would reduce reporting burden without increasing risks to public health or harming state pollution prevention efforts.

While EPA has not officially announced the number of comments it received, according to the more than a dozen organizations that provided online tools for submitting comments, at least 70,000 comments were submitted. According to EPA sources, comments against the proposals continue to pour in, despite the comment period having ended on Jan. 13.

Now, EPA must compiling and review the comments, and prepare a set of responses to all the issues they raise. During that time the EPA may modify its proposals based on the comments or even withdraw the proposals entirely. Given the volume, not to mention the variety of reasons and sources of opposition, the agency will likely take several months to prepare a full response. Officials report that the agency hopes to have a final rule published by December 2006.

In the meantime, EPA has begun gathering stakeholder input on another proposal to limit the TRI, the possibility of alternate year reporting under TRI. Under the law, EPA must notify Congress about its intent to alter the frequency of TRI reports. Then, the agency must decide whether the change would harm the usefulness of the program to states, health professionals and the general public. The agency's stakeholder outreach appears to be the first stage of its investigation into the matter. After concluding this process, if the agency elects to move forward with this other cutback to TRI reporting, that rule change could not be proposed before October 2006, after which roughly a year would be needed to conclude the rulemaking process.

While congressional approval is not required for either the TRI threshold reporting changes or reduction in the frequency of TRI reporting, Congress can intervene before either proposal is finalized; and, given the level of concern over both proposals that a number of senators and representatives have expressed, such intervention does not seem out of the question.

Government Secrecy's Latest Victims: Whales

According to documents released to the Natural Resources Defense Council, all references to the possibility that naval sonar may have caused 37 whales to swim ashore and die in North Carolina last year were deleted from a government report on the incident. The revelation came as the Department of the Navy nears the close of its public comment period on its plans to build an underwater sonar training range in the same North Carolina location.

More than three dozen whales beached themselves within a few hours of one another on North Carolina's Outer Banks on Jan. 15, 2005. At the time, the Navy was testing offshore sonar at the site of a proposed 600-square-mile Undersea Warfare Training Range on the continental shelf off North Carolina, less than 200 miles from the Charleston jetties.

The government was asked to investigate the incident and issued a preliminary report with no mention of sonar blasts as possibly contributing to the mass beaching. However, in an earlier draft, Teri Rowles, coordinator of the National Marine Fisheries Service's stranding response program, concluded that the whales' injuries may have been indicative of damage from sonar sound blasts. Rowles noted that the injuries were similar to other mass whale strandings, in which sonar was the suspected cause.

Yet, the official draft report released by the National Oceanic and Atmospheric Administration contained no mention of sonar anywhere. Rowles told the Washington Post that all references to sonar were removed because it was only one of several possible causes and had not been proven.

NRDC attorney Andrew Wetzler characterized the public draft as "more like spin than science."

Oddly, that active sonar is harmful to whales is neither a new or hotly contested issue. Environmentalists have long worked to bring to light the damage sonar inflicts on marine life. The Navy has even acknowledged sonar's harmful effects in a report on the stranding of 17 whales in the Bahamas in 2000 that concluded that sonar from Navy ships was the most likely cause.

So why no mention even of the possibility that sonar played a role in this early report? The answer may lie in the timing of the Pentagon's plans to build a controversial sonar training facility nearby. Public hearings are being held right now on the proposal, and the public comment period will close at **the end of January**. The final report on the whale beaching, according to Rowles, should be completed by this March. NRDC has argued that the hearings should not be allowed to close until all of the information on the 2005 strandings has been released to the public. The Navy's environmental impact statement on the proposal is expected to be submitted this fall.

The issue is reminiscent of the Environmental Protection Agency's Draft Report on the Environment in 2003, which received broad criticism for its total lack of information on climate change. Later, leaked drafts of the report revealed that a section on climate change was included in earlier drafts but was deleted by the agency after sweeping editing by the White House's Council on Environmental Quality made the section all but meaningless.

Update: "Is Industry Pulling EPA's Strings?"

On Jan. 23 Thomas Sullivan, chief counsel for advocacy with The Small Business Administration (SBA), contacted OMB Watch in response to "Is Industry Pulling EPA's Strings?", an article recently published in *The Watcher* that describes a troubling pattern of close cooperation and extensive communication between the SBA and the Environmental Protection Agency around reducing chemical reporting under the Toxic Release Inventory (TRI), in order cut down on governmental paperwork for companies. Sullivan asked that OMB Watch clarify that the 1997 investigation by SBA's Inspector General into possible unethical actions around the TRI by SBA lawyer Kevin Bromberg, who has previously advocated for an industry coalition on TRI, found no evidence of inappropriate action. During his conversation with OMB Watch, Sullivan acknowledged that all of the facts cited in the article about recent interactions between EPA and SBA are correct. The article has been updated to reflect SBA's request.

Amid Reform Frenzy, Senate Democrats Introduce Lobby Reform Bill

Since the guilty plea by lobbyist Jack Abramoff, Congress has been hurriedly preparing lobby and ethics reform legislation. Republicans announced their ideas at a Jan. 17 press conference that seemed mostly designed to pre-empt the unveiling of Democrats plan on Jan. 18. The Senate Democrats followed their press event with the introduction of a comprehensive bill authored by Minority Leader Harry Reid (D-NV). In our view, the Reid bill is a solid beginning, but falls short of adequately addressing the culture of corruption that surrounds Washington politics today. To follow is an analysis of the Reid bill and its impact on lobbying generally and nonprofit lobbying

specifically.

While Senate and House Republican reform bills are certainly in the works, neither plan has taken shape. In fact, at their joint press conference, Republican leaders in the House and Senate appeared not to have reached full agreement on all the ideas that were advanced. Senate Majority Leader Bill Frist (R-TN) has asked Sen. Rick Santorum (R-PA) to develop the Republican plan for the Senate. Reportedly, Santorum is working from legislation drafted in December by Sen. John McCain (R-AZ). House Speaker Dennis Hastert (R-IL) has asked House Rules Committee Chairman David Drier (R-CA) to head up the Republican House proposal. Hastert has mentioned bringing a House bill to the floor in the first week of February.

The House and Senate Democrats, on the other hand, offered a unified voice on reform, presenting a set of principles including:

- Expanded lobby disclosure,
- An extended ban on lobbying by former members of Congress, senior congressional staff, and senior Executive Branch officials from one to two years after they have left office
- An end to the "pay-to-play" schemes propagated by Republicans that pressured associations and lobby firms to hire Republicans supportive of their leadership agenda and demanded campaign contributions in return for access to lawmakers.
- A requirement of lawmakers and senior congressional staff to disclose negotiations for private sector jobs and of Executive Branch officials seeking private employment to first receive approval from the Office of Government Ethics.
- A requirement that conference committee activities be done in sunlight with a 24-hour review period (except in emergencies), thus adding greater fairness and transparency to the legislative process.
- Strong enforcement mechanisms, such as criminal penalties for not complying with many of the new reforms. They also would require annual ethics training for all congressional staff.

The Senate Democrats followed up with a legislative proposal on Jan. 20, when Reid introduced S. 2180, the Honest Leadership and Open Government Act of 2006. The bill was co-sponsored by 34 other Democrats in the Senate, which may give it momentum.

Lawmakers are determined to pass a bill quickly, possibly as early as March 1. On Jan. 25, the Senate Homeland Security and Governmental Affairs Committee will hold a hearing on the various lobby reform proposals, including Sen. John McCain's (R-AZ) S. 2128, Sen. Russ Feingold's (D-WI) S. 1398, and Sen. Barack Obama's (D-IL) (S. 2179).

For the nonprofit sector, it is important to understand that none of the bills would restrict direct or grassroots lobbying by any organization. Instead the focus is on greater disclosure, recognizing that lobbying is a First Amendment right to be protected. Moreover, under the Lobbying Disclosure Act, which all the bills would amend, nonprofits that elect to follow the expenditure test can continue using the definitions from the tax code, with which they are already familiar.

Even if the most comprehensive bill that has been introduced is enacted, much more will be needed to stop the pervasive and corrupting influence of money in the political process. For example, none of the bills address publicly financed or clean election laws. Until Congress addresses the root

problems, influence peddlers will continue to find ways to circumvent the rules.

For the nonprofit sector and those that cannot "pay to play" in the policymaking process, every change Congress makes to reduce the influence of money will help. Such efforts ensure an open and level playing field in accessing elected leaders, giving nonprofits a more equal footing as those representing moneyed interests.

Summary of Key Lobby Disclosure Provisions in the Reid Proposal

Increase in Frequency of Reporting--from Semiannual to Quarterly

Currently, organizations are required to register, under the Lobby Disclosure Act, (LDA) if its employees/lobbyists meet these two conditions:

- The organization must have one or more compensated employee who engage in federal "lobbying." LDA defines "lobbying" as more than one "lobbying contact" by a person who spends at least 20 percent of his or her time on "lobbying activities" over a six-month period. A "lobbying contact" is currently defined as an "oral or written communication to a covered official with respect to the formulation, modification or adoption of a law or regulation." The definition of a "lobbying activity" currently includes "lobbying contacts" and activities in support of lobbying contacts.
- An organization must spend, in total expenses for its lobbying activities, $24,500 in a 6-month period. This also includes money spent on outside lobbyists.

Organizations meeting the criteria above are required to file semi-annual reports identifying lobbyists, clients and employers, and the issues discussed in "lobbying contacts."

Under the Reid bill, the trigger for registering would change from $24,500 in a 6-month period to $10,000 in a 3-month period. Given that the registration requirements have not changed substantially, few additional nonprofits would now be required to register. Filing by lobby firms would also be shifted to quarterly filing.

Grassroots Lobbying Disclosure Requirement

The LDA currently only covers activities described as "direct lobbying," omitting any reference to "grassroots lobbying," which has grown over the years, particularly through firms that generate grassroots responses. Under Reid's legislation, grassroots lobbying would now be disclosed if the organization is required to file an LDA report. Thus, if a nonprofit is not required to register because of its direct lobbying expenditures, it would not need to disclose grassroots lobbying costs. Grassroots lobby firms, however, would be required to disclose their activities if they receive income of or spend $50,000 or more in a quarter, thereby capturing most grassroots lobbying firms under the disclosure requirements. (Firms that receive or spend $250,000 or more must report more frequently.)

Those who are required to disclose grassroots lobbying must provide an estimate of the total costs as well as the total amount related to paid advertising. Communications with members, employees, officers or shareholders are exempted under grassroots lobbying unless a lobbyist pays the organization to undertake such communications.

The Reid bill definition of grassroots lobbying is broader than the definition in the tax code that applies to charities. The bill calls grassroots lobbying any effort to get the "public to communicate their own views on an issue to Federal officials..." For those charities choosing to operate under the IRS expenditure test, grassroots lobbying has a prescribed "call to action" that only applies to attempts to influence legislation. (Charities, however, disclose grassroots lobbying at the local, state and federal level. This bill would only apply to the federal level.) **However, the bill does not change the provisions of the LDA that allow charities that elect to fall under the IRS expenditure test to use IRS definitions of lobbying when filling out their LDA reports.**

Coalitions

In an attempt to root out puppet coalitions being used as a front for big-money lobbying, Reid's bill would require those filing LDA reports to disclose the name, address, and principal place of business of any organization that contributes more than $10,000 to the lobbying activities semiannually and participates in the "planning, supervision or control" of such lobbying activities. However, the legislation makes an exception for the disclosure requirement if it is publicly available knowledge that the client--the original organization that hired the lobbyist--and the organization that contributed more than $10,000 in the 6-month period to the lobbying campaign are affiliated. This is true unless the organization contributing money controlled or totally planned the lobbying activities. The legislation also protects the privacy of an organization's members or donors

Campaign Contributions

With respect to campaign contributions, Reid's bill is similar to legislation, S. 2128,, recently introduced by McCain. Neither bill would prohibit campaign contributions from lobbyists, but the Reid bill would expand the LDA reporting to include information about campaign contributions from lobbyists to individuals, PACs, and party committees. Under both the Reid and McCain bill, lobbyists and lobbying firms would be required to report dates, total funds raised and recipients of funds at fundraising events.

Travel and Gifts

Currently, congressional rules prohibit lobbyists from paying for travel for members of Congress and their staff, although lobbyists may arrange travel and have their clients pay for it. Travel expenses for members of Congress and their staff can be paid for by corporations or nonprofit organizations, and the sponsor and cost of travel must be reported 30 days after the event and on annual personal financial disclosure forms.

The current limit on gifts to a member of Congress and staff is $50 per item and $100 per year from any individual. The term "gift" covers any gratuity, favor, discount, entertainment, hospitality, loan, or other item having monetary value. In particular, the term includes services, training, transportation, lodging and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. A member or employee of Congress may accept a gift only if it is unsolicited and there is no presumption that it is in exchange for influencing a member's governmental duties.

Reid's bill bans gifts from "lobbyists" outright, but does not ban gifts from non-registered advocates.

Travel is not usually treated as a gift. Under Rule 35 of the Standing Rules of the Senate, a

reimbursement to a Member, or employee from an individual (other than a registered lobbyist) for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, fact-finding trip or similar event is not a gift prohibited by the rule, as long as it is in connection with the duties of the member or employee, and it is disclosed to the Select Committee on Ethics.

Reid's legislation does not ban travel outright. Instead it modifies Rule 35 of the Standing Rules of the Senate to state that a Member of Congress or congressional employee may go on a trip sponsored by a 501(c)(3) organization, as long as a lobbyist does not take a major role in planning or financing the trip, or participate in the trip. The charity must then provide certification to the Select Committee on Ethics that the lobbyist did not plan or attend the trip. Additionally, any 501(c)(3) organization that is affiliated with any group that lobbies before Congress is prohibited from arranging or paying for travel.

Electronic Filing/Online Database

According to the LDA, lobby disclosure forms must be made available for public inspection and copying at reasonable times. Both the Senate and House Clerk's office accepts--and now the House requires--electronic forms.

Like bills introduced by McCain, Rep. Marty Meehan (D-MA) (H.R. 2412) and Sen. Russ Feingold (D-WI) (S. 1398), Reid's bill requires electronic filing, and, like McCain's bill, requires the information be made available not more than 48 hours after a report is filed.

Reid's legislation also directs the Secretary of the Senate to maintain a free searchable database containing the information filed under LDA requirements. It does not go as far as McCain's bill, however, which requires the database also link to relevant Federal Election Commission filings.

See "Reform Must Illuminate Channels of Money, Influence" for more on the database and transparency.

Enforcement

Reid's bill establishes a Senate Office of Public Integrity to receive lobbyist disclosures with authority and resources to conduct audits to ensure compliance with the LDA. Currently, the Secretary of the Senate receives lobbyist disclosures, and it is not clear how the offices will interact. The Reid bill also gives authority to the Office of Public Integrity to refer violations to the Select Committee on Ethics and the Department of Justice (DOJ) for civil and criminal penalties.

The penalties the DOJ can hand out are also increased under Reid's bill. The civil penalties rise from $50,000 to $100,000, subject to the severity of the violation. Reid's bill would also empower the DOJ to impose criminal penalties if an individual knowingly makes defective filings, the penalty not more than 5 years and a fine. If the filings were both knowingly and corruptly defective, the penalty is upped to not more than 10 years and a fine.

High Court Opens Door to Campaign Finance Rule Challenge

Less than a week after oral arguments were held the Supreme Court ruled on Jan. 23 that the Bipartisan Campaign Reform Act of 2002's (BCRA) ban on "electioneering communications" can be

challenged on a case-by-case basis. The ruling opens the door for the Wisconsin Right to Life Committee (WRTL) to pursue its claim that BCRA is unconstitutional as applied to its grassroots lobbying communications. The unanimous opinion in *Wisconsin Right to Life Committee v. Federal Election Commission* referred the case back to the lower court to determine if WRTL's broadcast is a genuine grassroots lobbying communication that should therefore be exempt. For nonprofits looking to the 2006 election cycle, the ruling will likely leave in place the prohibition on ads that mention a federal candidate 30 days before a primary and 60 days before an election, since the Federal Election Commission (FEC) has revoked its earlier exemption for 501(c)(3) organizations, and the lower court may not act quickly enough.

In 2004 WRTL, a 501(c)(4) social action organization, sought to broadcast grassroots lobbying messages urging Sens. Russ Feingold (D-WI) and Herb Kohl (D-WI) to oppose Senate filibusters of President Bush's judicial nominees. Because Feingold was running for re-election, the ads violated BCRA's electioneering communications rule, which prohibits corporate (including nonprofit) funding of broadcast ads referencing a federal candidate within 30 days before a primary election or 60 days before a general election. WRTL filed suit seeking an injunction to this restriction.

Both the lower court and federal appeals court denied WRTL's bid for an injunction, relying on language in the Supreme Court's decision in *McConnell v. Federal Election Commission* that upheld the constitutionality of the rule on its face, and that it read as disallowing as-applied challenges (i.e., "this law is unconstitutional as applied to me") to the provision.

The Supreme Court opinion holds that such challenges are not foreclosed by its opinion in the *McConnell* case, noting that, "In upholding Sec. 203 [electioneering communications] against a facial challenge, we did not purport to resolve future as-applied challenges."

On Jan. 24 WRTL asked the lower court to expedite its consideration of the case, noting that BCRA mandates speedy consideration of all challenges to it. WRTL also noted that "throughout 2006 there are 30 day blackout periods befor each state's primaries, beginning with the Texas primary of March 7th, and any exemption for grassroots lobbying will benefit not just WRTL but all lobby groups."

In related news, on Dec. 21, 2005 the FEC voted to drop exemptions for 501(c)(3) nonprofits to BCRA rules that restrict electioneering communications. The new rule eliminates exemptions for television, radio and cable advertisements that mention a federal candidate 30 days before a primary or 60 days before a general election paid for by charities and religious organizations, as well as "public service announcements" (PSAs) that are aired for free.

During oral argument the court appeared split on whether WRTL's ad should be exempt as a pure grassroots lobbying communication. WRTL's political action committee opposed Feingold in the election. This issue could again come before the Supreme Court, if the lower court's ruling is appealed by the losing party.

A diverse coalition of charities filed an amicus brief in the case on Nov. 14, 2005,urging the court to protect the right of nonprofits to broadcast grassroots lobbying communications. The brief, filed on behalf of 35 charities, argued that the electioneering communications restrictions deny charities the right to petition the government for redress of grievances, which is protected by the First Amendment. The electioneering communication restrictions in BRCA cannot be constitutionally applied to 501(c)(3) charities, according to the brief, because such organizations are, and must be to

retain their tax-exempt status, nonpartisan and nonpolitical.

IRS to Step Up Nonprofit Enforcement in 2006

Internal Revenue Service (IRS) Commissioner Mark Everson, speaking to the Greater Washington Society of CPAs, recently announced that in 2006 the IRS will increase its enforcement efforts for exempt organizations, building on a trend of the past few years. Among the agency's top priorities, according to Everson, will be enforcement of the ban on political intervention by charities and religious organizations. The announcement comes as the IRS continues to draw criticism for its Political Intervention Program (PIP) of 2004, which included audits of organizations based on statements critical of administration policies.

The IRS, whose budget for investigating nonprofits rose 23 percent last year alone, has increased its compliance contacts with nonprofits from 14,000 in 2003 to more than 20,000 in 2005. While no such budget increase will take place this year, the agency plans, according to Everson, to "catch [its] breath and train the few hundred employees that came on last year..."

Some of the agency's unfinished work includes audits of 130 charities, specifically "501(c)(3) organizations" the IRS suspects of conducting prohibited partisan political activities. Everson said almost half these organizations are churches, and that most problems stemmed from one-time events that were easily resolved. He anticipated the IRS will continue to receive questions from the public and Congress about its examination of religious organizations.

The 2004 PIP program came under fire for audits under the program of the NAACP and other groups that criticized Bush administration policies. Although a report by the Treasury Inspector General found no partisan retaliation, the problem of interpreting criticism of public officials as partisan intervention remains unresolved in 2006.

Without Addressing Budget Process, Lobbying Reform Doomed to Fail

Since lobbyist Jack Abramoff pleaded guilty to charges of conspiracy, mail fraud and income tax evasion, Democrats and Republicans have eagerly jumped on the lobbying and ethics reform bandwagon. Amid the flurry of proposals to overhaul Washington's lobbying system, however, one of the primary mechanisms through which lobbyists see their influence pay off--the system of budget earmarks--has been largely ignored.

Most of the reform proposals released so far deal directly with lobbying, prohibiting trips arranged by lobbyists, limiting gifts, requiring greater disclosure of lobbyist-lawmaker contacts, and addressing the "revolving door" between public service and lobbying jobs. If enacted wisely, these are worthwhile first steps to cleaning up the culture of corruption in Washington. Unfortunately, they do nothing to address a central aspect of the lobbying scandals--the ability of individual lawmakers to alter major legislation, often with little disclosure, to include changes in regulatory policy or funding for individual, special projects--a process known as earmarking.

Earmarks, often referred to as "pork," have been an integral part of the appropriations process for

decades. Individual legislators seeking re-election will often develop and promote lists of special projects or district-specific funding they were able to secure to convince voters of their ability, influence, and value. There is a dark side to this process, however, involving earmarks being traded between congressional leaders and other members of Congress in exchange for allegiance on crucial votes, or when they are inserted in the dead of night because powerful lobbyists who contribute money to campaigns request them.

Just today, for example, a front-page Washington Post story reports that legislation was dropped at the last minute from one of this year's budget bills, saving private HMOs $22 billion over the next decade. "That change," according to the story, "was made in mid-December during private negotiations involving House Ways and Means Chairman Bill Thomas (R-CA), Senate Finance Committee Chairman Charles E. Grassley (R-IA) and the staffs of those committees as well as the House Energy and Commerce Committee. House and Senate Democrats were excluded from the meeting." The bill was passed by the Senate and will be reconsidered by the House as early as next week.

While these last-minute edits rarely make the news, they are often significant, and some lawmakers are now proposing reforms to begin addressing the problems of earmarks and flaws in the congressional budget process. Sen. John McCain (R-AZ) has recently called for greater accountability and disclosure of earmarks in bills. His proposals would make it easier to strike earmarks from appropriations bill by requiring that they appear in the bill's actual text instead of its accompanying report--usually a less publicized document that even some lawmakers do not see until after a vote on the legislation. McCain's proposal would create more time for reviewing important legislation, a change supported by Sen. Tom Coburn (R-OK) among a number of other senators. Rep. Jeff Flake (R-AZ) has offered a companion proposal to McCain's in the House.

Four House Democrats have also taken up problems with earmarks and other aspects of the budget process, proposing a 14-point reform package. Reps. David Obey (D-WI), Barney Frank (D-MA), Tom Allen (D-ME), and David Price (D-NC) have introduced legislation that would amend House ethics rules to prohibit members from advocating for earmarks without disclosing any financial interests they may have in organizations directly benefiting from those earmarks. Obey's reform package, which has the support of 120 Democrats, including Minority Leader Nancy Pelosi (D-CA), would also:

- prevent congressional leaders from securing votes by offering members earmarks on related legislation or policy proposals
- prohibit last-minute additions of earmarks to conference reports without a full public vote by the conference committee
- prohibit reconciliation bills that increase the budget deficit compared to the CBO baseline, and
- create a mandatory minimum time for consideration of all appropriations legislation.

The latest in a growing roster of reform proposals was announced Jan. 23 by Sens. Norm Coleman (R-MN) and Ben Nelson (D-NE), who intend to introduce legislation to create an independent commission to study and recommend a comprehensive set of lobbying reforms. The Commission to Strengthen Confidence in Congress would be made up of 10 members (five Democrats and five Republicans) who are not currently in Congress. While supportive of current reform efforts, Coleman and Nelson believe the unique perspective of such a commission was needed, with Coleman noting "we also need long-term reforms that can only be achieved from the outside

looking in."

These packages face an uncertain future, despite their obvious merits, in the current Republican-controlled Congress. Early word from members of the Republican leadership reveals a plan for reform that does not address many of the widely-recognized problems tackled in the above-mentioned proposals. GOP lawmakers seem reluctant to bite the hand that feeds them. The budget process, which lacks the public outcry that blatant lobbyist malfeasances received, but which also gives individual lawmakers enormous political clout, will likely end up on the cutting room floor. Even Democratic plans, while more developed and comprehensive, fall short of solving Washington's corruption ills.

Challenges notwithstanding, House Speaker Dennis Hastert (R-IL) has tasked Rules Committee Chairman David Dreier (R-CA) with developing a consensus reform package, including a focus on the process of earmarking. Dreier has not commented on what proposals he is currently considering, saying only that he was reviewing a variety of options.

In addition, the House Appropriations Committee is putting together a slightly different proposal for limiting the influence of earmarks rather than outlawing them. Their reforms would standardize a system for lawmakers to request a limited number of earmarks each year. The Appropriations Committee hopes to reduce the number of earmarks requested from the current estimate of 35,000 per year to a number that could be manageably reviewed for merit and then prioritized. The committee is also considering increasing the process' transparency by requiring projects' sponsors be listed in the Congressional Record and that request letters be publicly published.

This plan, doing nothing to fundamentally change the system, would only alter the rules slightly. Simply reducing the number of earmarks while still allowing legislators to broker deals for the highest bidder will do little to end Washington's culture of corruption. In fact, by limiting the number of opportunities a legislator has to leverage his or her influence for outside interests, the proposal may actually exacerbate the problem by forcing far greater competition for the smaller number of opportunities for influence. The system may wind up rigged even more in favor of powerful and wealthy interests.

Proposals offered thus far fall short of the type of reforms needed to truly stem the flow of money and influence between government, well-funded special interests and high-powered lobbyists. Without more comprehensive changes to the system, including earmark, pay-as-you-go, and other appropriations process reform, lawmakers will continue playing the same game, only with slightly different rules. True lobbying reform means budget process changes to help level the playing field for all interests, particularly the public interest.

Still Fewer Heirs Will See Fortunes Taxed in 2006

On Jan. 1, the value of assets that can pass tax-free from one generation to the next rose from $1.5 million to $2 million (or $4 million per couple), an increase that was scheduled under the Economic Growth and Tax Relief Reconciliation Act (EGTRRA), passed by Congress in 2001. This expansion of tax-free inheritance means an even smaller fraction of a percent of Americans will be subject to the tax.

Underscoring this fact, United for a Fair Economy released new estimates last week indicating that

less than one-third of one percent of all U.S. estates will be affected by the federal estate tax in 2006. Only 0.27 percent--or one in every 370 estates--will pay any estate tax in 2006, according to the UFE report. This is down significantly from the 2.18 percent who paid the tax in 2000.

A pervasive misconception, often put forward by anti-tax interests, is that the estate tax hits many taxpayers who can't afford to it. This year, every penny of 99.73 percent of all estates will be passed on tax-free. The estate tax--which is the nation's most progressive tax--provides important balance to a tax code that has shifted a greater and greater part of the burden onto low- and middle-income Americans.

While the House voted to repeal the tax last April, the Senate has yet to vote on the issue during this Congress. Sen. Jon Kyl (R-AZ), the GOP point-person on the estate tax, recently said he will ask Majority Leader Bill Frist (R-TN) to hold an estate tax vote early this year, in order to avoid a vote on the divisive issue too close to the November elections.

Last year, the Senate was forced to postpone a vote on the estate tax because of Hurricane Katrina, and many believe a vote will be difficult for Republican leadership to schedule any time soon. U.S. Chamber of Commerce Vice President Bruce Josten recently commented, "I suspect the budget, the deficit, expecting another supplemental request for Iraq this year at some point, the probability of raising the debt limit, makes the forecast on [estate] tax full repeal pretty cloudy."

Under current law, the estate tax exemption level will gradually rise through 2009--when it peaks at $3.5 million (and $7 million for couples)--then the tax is completely repealed in 2010, only to return in 2011 at 2001 levels ($1 million exemption). How and when this strange situation, which is unacceptable to either side of the estate tax debate, will be resolved remains unclear.

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Reform Bills Mount, Both Houses Plot Course of Action

As reform bills mount and calls for lobbying reform intensify, members of Congress are beginning to grapple with technical details and a timeframe for legislation.

On Jan. 25, the Senate Homeland Security and Governmental Affairs Committee (HSGAC) held the first of what may be many congressional hearings on lobbying reform. Three panels of witnesses testified, addressing a wide range of issues, including grassroots lobbying disclosure; possible bans on privately sponsored travel and gifts for congressional members and staff; and spending earmarks inserted into appropriation bills.

Committee Chairwoman Susan Collins (R-ME) called the hearing a "much needed review of legal lobbying activities," but acknowledged that developing legislation would be difficult. Senate Majority Leader Bill Frist (R-TN) has asked her to develop legislation for floor consideration in March.

Collins' recognition of the difficulty in passing legislation could become prescient. Since the hearing,

Rep. John Boehner (R-OH) was elected the House Majority Leader and has expressed caution about rushing forward with legislation, even as House Democrats introduced legislation. He also has raised concern about proposals that he deems too restrictive, such as a ban on privately funded travel and gifts for congressional staff and members, a proposal put forward by House Speaker Dennis Hastert (R-IL). Additionally, advocacy groups have begun organizing efforts to slow down the lobby reform train.

Adding to the challenge is partisan wrangling over the "culture of corruption." The two senators asked to lead efforts in the Senate for their respective parties have gotten into a public feud. Sen. John McCain (R-AZ) fired off a testy letter to Sen. Barack Obama (D-IL) on Feb. 6 criticizing Obama for withdrawing support for his bill.

"I would like to apologize to you," the letter read, "for assuming that your private assurances to me regarding your desire to cooperate in our efforts to negotiate bipartisan lobbying reform legislation were sincere... [P]lease be assured I won't make the same mistake again... I understand how important the opportunity to lead your party's effort to exploit this issue must seem to a freshman Senator, and I hold no hard feelings over your earlier disingenuousness."

The interactions between McCain and Obama are likely to be considered minor skirmishes in what should be a hotly contested public debate on addressing congressional integrity.

The Collins Hearing

HSGAC held the hearing to examine the various government reform proposals that have been introduced in the wake of lobbyist Jack Abramoff's guilty plea. While differing on the details, the common themes are lengthening the amount of time members and senior staff must wait before they can lobby Congress; further restricting or banning gifts from lobbyists; prohibiting lobbyists from paying for or accompanying members on trips; and requiring increased disclosure of lobbying and coalition activities.

Although most members and panelists agreed that lobby reform is needed, some members urged caution in rushing to bring legislation to the floor. Sen. George Voinovich (R-OH) voiced his concern that an examination of existing rules is needed, commenting on the "significant confusion" surrounding disclosure requirements. Voinovich, Chairman of the Senate Select Committee on Ethics, offered to hold a hearing on the current capacity of the Senate to administer and enforce the existing rules.

Reform of campaign fundraising activities and earmarks were on many Senators' minds. Voinovich mentioned the amount of time and energy Senators spend raising money for their campaigns, a concern that was echoed by members and panelists alike. Sen. Pete Domenici (R-NM) argued that corruption stems from the growing cost of campaigns and the constant chase to raise funds for re-election bids. He proposed restricting lawmakers' fundraising to their home states and banning contributions from Washington lobbyists.

Bill Samuels, director of legislation at the AFL-CIO, framed the issue as an uneven playing field, cautioning against reforms that "heighten the disproportionate influence business already has in Congress." He explained that "political action committees (PACs) set up by corporations outspent labor union PACs by 24-1 in 2004. The imbalance is even worse when it comes to lobbying. In 2000... lobbyists representing business interests outspent workers' representatives by more than 50-1,

spending well over $1 billion to influence the outcome of legislation."

Sen. John McCain (R-AZ), who introduced S. 2128, the Lobby Reform and Transparency Act, commented that, as lobbying has grown, so have funding earmarks. "We are not going to fix the system until we fix earmarks," he argued. Earlier, Sen. Tom Coburn (R-OK) put it much more plainly: "until we eliminate earmarking, the process of putting the well heeled above those who aren't able to be in that position... we won't solve the problems. The problem is us."

This topic of leveling the playing field also arose during discussion on restrictions on privately funded travel. Dick Clark, vice president of the Aspen Institute, recommended instituting a prohibition on registered lobbyists, or organizations that employ registered lobbyists from paying from travel, although a total ban would be "foolhardy."

Both Samuels and John Engler, president of the National Association of Manufacturing, argued in defense of privately funded travel, but advocated different reform mechanisms. Engler encouraged members not to create legislation "limiting the ability of organizations to educate policymakers on the real life impact of their actions." Samuels supported a ban on all privately funded travel with an exception for costs sustained when a member attends an organization's meeting or convention, as long as the meeting or convention is being conducted for reasons unrelated to the member's attendance. This would allow nonprofits to bring members of Congress to their meetings or conventions--an important way for nonprofits to educate members of congress and their staff--regardless of any advocacy work the nonprofit might do.

Moving Legislation Forward

At the same time, Senate and House leaders have struggled with both the language and timelines for legislation. Sen. Majority Leader Bill Frist (R-TN) proposed a bipartisan task force to create legislation. This was rejected by Sen. Minority Leader Harry Reid (D-NV), who believes it would delay action on the issue. Instead, Reid introduced S. 2180, the Honest Leadership and Open Government Act on Jan. 20. The Democrats have appointed Sen. Barack Obama (D-IL) to head up the their reform efforts. He continues to push for committee consideration of S. 2180, although he has expressed his willingness to work with other members in a bi-partisan manner.

Reportedly, McCain and Sen. Rick Santorum (R-PA), the Senate Republican's point man on government reform legislation, have been working in collaboration with HSGAC to get a bill to Frist by Feb. 27. There is speculation that Frist's "Lobby Reform Working Group" will produce legislation similar to McCain's original proposal. A sticking point, however, may be earmarks. Sen. Trent Lott (R-MS), a member of the Working Group, has started his own bi-partisan initiative to focus on earmarks that does not go as far as McCain's proposal. Lott, Chairman of the Senate Rules and Administration Committee, is holding a hearing on making the legislative process more transparent on Feb. 8.

While legislation is moving full steam ahead in the Senate, in the House newly elected House Majority Leader John Boehner (R-OH) is not creating a timeline for legislation. "When we have a bill ready, we'll introduce it, it's as simple as that", he said. Originally, Speaker Hastert appeared to be pushing strongly for travel and gift bans, as well as changes to the earmarking process, but the internal GOP struggle over H.RES.648, a bill introduced by Rep. David Dreier (R-CA) to revoke floor and gym privileges for former members who are registered lobbyists, has forced party leaders to back down on the wider overhaul of lobbying regulations. On Feb. 1, the resolution passed 379-

On Feb. 1, H.R. 4682, a companion bill to Reid's legislation, was introduced in the House by Rep. Nancy Pelosi (D-CA). To date, 161 members have signed on as co-sponsors. The same day the House Government Reform Committee held a hearing that focused on a proposal to bar government officials convicted of crimes related to corruption from receiving government pensions. Witnesses from Common Cause and Public Citizen supported the pension proposal, but maintained that more needs to be done, including disclosure of lobbying contacts and tougher restrictions on the "revolving door," expanding the time former members of Congress and senior staff must wait before they can become registered lobbyists.

Republican leadership in both the House and Senate has indicated interest in adding restrictions on independent political committees (527s) to the government and lobby reform bills. Currently, none of the legislation proposed contains such language. While some Democrats have supported restrictions on 527s, most do not support including 527s in the current government reform legislation. In the House, Minority Whip Steny Hoyer (D-MD) said he would not support a bill mixing the two issues.

New Lobby Reform Legislation

H.R. 4682 The Honest Leadership and Open Government Act, sponsored by Rep. Nancy Pelosi (D-CA)
H.R. 4667 The Lobbying Transparency and Accountability Act of 2006, sponsored by Rep. Mike Fitzpatrick (R-PA)
H.R. 4696 Restoring Trust in Government Act , sponsored by Rep. Mike Rogers (R-MI)

New Earmark Legislation

S. 2233 To reform and improve regulation and congressional ethics, sponsored by Sen. Dianne Feinstein (D-CA)

New Disclosure Legislation

H. Res. 647 To post travel documents on the Internet, sponsored by Rep. Walter Jones (R-NC)

Inquiry into Gov't Spying on Nonprofits Expands

On Feb. 1, the American Civil Liberties Union (ACLU) expanded its inquiry into government spying on U.S. nonprofit groups by filing multiple Freedom of Information Act (FOIA) requests with the Department of Defense (DOD), in order to determine the full extent of monitoring by the Pentagon. The new ACLU information requests seek information on four national groups and several local groups in six states. Further review of documents already released to the ACLU reveals that the Federal Bureau of Investigation (FBI) has used reports by right-wing groups in its investigations.

The ACLU requests seek all documents maintained by the DOD, including its TALON database. TALON, which stands for Threat and Local Observation Notice, was launched in 2003 to track groups and individuals with "links" to terrorism. Leaks to the media in December 2005, however,

revealed that TALON was also being used to spy on peace groups. The ACLU requests also seek details on whether TALON records have been or will be shared with other agencies.

In a statement released by the ACLU, announcing the new FOIA requests, Associate Legal Director Ann Beeson said, "Unchecked government spying has a chilling effect on free speech and causes Americans to think twice before expressing dissent or engaging in lawful protests."

In January, after the uncovering of TALON and other spying on domestic groups and the outcry it sparked, Deputy Secretary of Defense Gordon England ordered intelligence personnel to get "refresher training" on collection and use of information on U.S. citizens.

The groups identified in the ACLU's recent FOIA requests are the American Friends Service Committee, Veterans for Peace, United for Peace and Justice, Greenpeace and dozens of groups in California, Florida, Georgia, Maine, Pennsylvania and Rhode Island. A press release from the Maine Civil Liberties Union said the group found evidence of FBI interception of communications from members of the Maine Coalition for Peace and Justice. It joined the recent FOIA requests to DOD, asking for information on three peace groups and itself.

In California, students at UC Santa Cruz and UC Berkeley learned in December 2005 that they were the subject of TALON investigations. An ACLU of Northern California press release, announcing that its request for further documents, said, "Students should be able to freely express themselves on campus without fear of ending up in a military database." An ACLU of Pennsylvania press release said its FOIA requests were filed on behalf of seven organizations, while press release from the ACLU of Florida said the chapter sought DOD information on nine organizations and four individuals.

Meanwhile, a review of previously released documents by the ACLU and National Public Radio (NPR) showed that the FBI is using research reports about environmental groups from right-wing think tanks in conducting its domestic surveillance of nonprofits. NPR's *Living on Earth* guest host Jeff Young described searching through nearly 2,000 pages of FBI documents and concluded the FBI investigation of the environmental group Greenpeace depended "pretty heavily on research done by a couple of think tanks that are very conservative, pro-business, anti-regulation in their mindset and their mission."

The two groups were identified as the Capital Research Center and the Washington Legal Foundation. Capital Research Center's website says the group analyzes "organizations that promote the growth of government and in identifying viable private alternatives to government regulatory and entitlement programs." The Washington Legal Foundation's site says its mission is "advocating free-enterprise principles, responsible government, property rights, a strong national security and defense, and a balanced civil and criminal justice system."

Nonprofits Call for Withdrawal of Anti-Terror Financing Guidelines

Nonprofit leaders recently called on the Treasury Department to withdraw its anti-terrorism financing guidelines for charities and to replace them with principles developed by the charitable community. Treasury's Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities, were initially issued in 2002 and revised on Dec. 5, 2005. Treasury sought comments on its revision, despite their having been operational since Dec. 5; it is unclear how the department will use

the comments submitted by the nonprofits.

Comments submitted by the Treasury Guidelines Working Group, a representative group led by the Council on Foundations of more than 40 charities, foundations, umbrella organizations and advisors, called for withdrawal of the Treasury guidelines stating that "the revised Guidelines continue to suggest onerous and potentially harmful procedures to charities....without providing any protection from terrorist abuse that is not already present under the laws and practices that are currently followed..."

OMB Watch, a part of the Working Group, in separate comments, explained its position that "[t]he goal of the Guidelines is laudable and we fully support Treasury's efforts to prevent diversion of charitable assets to terrorists. However, the Guidelines are not the best way to achieve this goal."

Comments from the nonprofit sector reflect objections to information collection and reporting that turn charities into agents of government; duplication of and conflict with existing laws regulating nonprofits; and the lack of safe harbor procedures to protect charities from asset seizure by the Treasury Department.

Many of those submitting comments, including the Working Group and OMB Watch, strongly objected to a statement in the introduction to the revised guidelines stating, "Investigations have revealed terrorist abuse of charitable organizations, both in the United States and worldwide, often through the diversion of donations intended for humanitarian purposes but funneled instead to terrorists, their support networks, and their operations." Comments noted the utter lack of cited evidence for these allegations.

Comments submitted by the Muslim Public Affairs Council (MPAC) note that "[t]here are many throughout the U.S. charitable community, both Muslim and non-Muslim, who take issue with such broad and sweeping statements about the evidence of actual criminal abuse within established institutions of the Muslim American community." The comments of Muslim Advocates suggest donor confidence problems have resulted from government anti-terrorism activities, noting that "a major, persistent factor in the weakening of charitable giving in the Muslim community is the continuing perception, whether accurate or not, that government investigations are arbitrary, capricious, without basis in fact and perhaps politically motivated...."

OMB Watch identified a host of reasons that the guidelines should be withdrawn:

- The voluntary nature of the Guidelines is questionable, given the broad powers Treasury has under the Patriot Act and Executive Order 13224 to seize and freeze charitable assets based on secret evidence and without meaningful recourse for affected charities.
- Treasury's emphasis on broad information collection and reporting by charities and foundations indicates a lack of focus in its program to stop diversion of funds to terrorism.
- The Guidelines continue to take a one-size-fits-all approach.
- There should be safe harbor procedures, opportunities to cure problems, and intermediate sanctions that allow charitable programs to continue to serve their intended beneficiaries.
- The guidelines can make funders risk averse, at the cost of programs that reach out to vulnerable populations and address the political and economic hardships at the root of terrorism.
- The sections which address governance and transparency are outside the Office of Foreign Assets Control's (OFAC) area of expertise, and are not relevant to the goal of preventing

diversion of funds to terrorists.
- The Guidelines are being used by other regulatory agencies in ways that conflict with their supposed voluntary nature.

The Working Group expressed further concerns:

- Provisions that suggest charities are agents of government threaten the safety of humanitarian workers "who may be targeted as a result of their perceived lack of independence from the government."
- The proposed increase in vetting procedures "suggest that charitable organizations run a gauntlet of information collection and reporting procedures that exceed due diligence practices which are routinely followed by organizations and which have, to our knowledge, proved adequate to prevent the unintentional diversion of assets to terrorist uses."
- Treasury's inclusion of matters already covered by state or federal laws, combined with the substantial civil and criminal penalties for violation of anti-terrorist financing laws, raise concern that "the revised Guidelines will evolve into de facto legal requirements through incorporation into other federal programs, despite the inclusion of the word "voluntary" in the title."

Nonprofits also argued that some of the due diligence suggestions in the guidelines are impossible to carry out as a result of government action. Comments from Kinder USA, a charity that provides aid to children in the Middle East, point out that on-site audits of grantees cannot be done because the Israeli government has denied visas to Kinder USA's board members and staff, and "[a]ppeals to the U.S. State Department and other government officials for assistance have been futile".

The American Civil Liberties Union (ACLU), in its comments, challenges the guidelines' heavy reliance on checking names of board members, key employees, recipients and others against its Treasury's Specially Designated Nationals (SDN) list as a means of preventing diversion of funds to terrorists, noting, "While the Guidelines are voluntary, alternatives to list checking that would promote compliance are not fully spelled out..." The ACLU maintains that this may hinder nonprofits from taking more effective steps. In addition, the ACLU notes that the guidelines encourage charities to take a risk-based approach, but do not define "how a charity should measure risk,"leading to concern "that risk-based assessments will become code words for racial profiling."

Comments from Friends of Charity (FOCA), an organization of Islamic charities in the Middle East and Europe, point out that the problems arising from the guidelines are likely to "stem from laws, regulations and practices that underlie the guidelines, *rather than the guidelines themselves.*" FOCA goes on to argue that "the guidelines rely upon a process of designating terrorist supporters that is severely flawed." The organization then suggests steps Treasury can take to improve both the guidelines and the enforcement process:

- Increased resources for OFAC and related agencies, since "we have found that in many cases these organizations are unresponsive or uninformed on important matters. Undoubtedly, this is due to lack of resources."
- Provide Advisory Opinions that would eliminate the uncertainty in the current system. This would help speed delivery of aid, particularly in times of disaster.
- Commission "an analysis of the cost and benefits of the current regulatory system and the revised guidelines."
- Establish a process to transmit frozen assets "to recipient populations that were originally

targeted for such aid."
- Broaden the dialog with the nonprofit sector "by inviting input on the underlying legal, regulatory and administrative structure" that governs anti-terrorist financing programs.

Blackout Period Begins for Some Nonprofit Broadcasts

For the first time ever, charities and religious organizations are among groups barred from broadcasting messages that refer to federal candidates within 30 days of a primary and 60 days of a general election. The Wisconsin Right to Life Committee (WRTL), a nonprofit organization that has challenged the ban, asked a special three-judge court to expedite its review of the constitutionality of the rule as it applies to grassroots lobbying broadcasts. The court will hold a status hearing for Feb. 27.

During the 2004 campaign cycle, the "electioneering communications" rule created in the Bipartisan Campaign Reform Act of 2002 (BCRA) did not apply to charities and religious organizations exempt under Section 501(c)(3) of the tax code. The Federal Election Commission (FEC) had initially exempted such entities due to their nonpartisan nature. The FEC withdrew the exemption in December 2005, however, after a federal court held its justification for the exemption inadequate. The FEC rule bars general references to federal candidates, so that a grassroots broadcast message during the banned period asking people to "call your Senator" to support or oppose legislation violates the rule.

In asking for quick resolution of the case, WRTL noted upcoming March primaries in Texas and Illinois. In April, an additional 10 states are scheduled for primary elections. As it stands, nonprofits in Texas and Illinois are now barred from broadcasts referring to federal candidates. Nonprofits in other states are also now barred from referring to federal candidates in Texas. A complete election schedule is available on NPAction.org.

WRTL, a 501(c)(4) social welfare organization, challenged the constitutionality of the "electioneering communications" rule after being instructed to discontinue grassroots lobbying ads during the 2004 election season. In January, the Supreme Court allowed the challenge and sent the case to the lower court to determine if an exemption is necessary based on the facts of the case.

White House Adds Bricks to Its Congressional Stonewall

The Bush administration's pattern of doggedly withholding information from Congress seems to have garnered national attention as congressional oversight on critical issues has accelerated. The White House has refused to provide copies of internal legal documents regarding warrantless domestic spying by the National Security Agency (NSA), communications detailing when the administration learned of potential wide-spread damage from Hurricane Katrina, and information, including photos, related to the president's dealings with disgraced lobbyist Jack Abramoff. The White House has even blocked key administration officials from testifying before Congress.

Stonewalling on Katrina

Committees in both the House and Senate are investigating exactly what went wrong in the preparation for and response to Hurricane Katrina. Determining the timeline of what officials knew

and when they knew it, relative to actions taken, is essential to that investigation. The Bush administration, however, has refused to disclose relevant communications and has prevented key officials, like Homeland Security Advisor Frances Fragos Townsend and Chief of Staff Andrew Card, from testifying before Congress.

The Senate Committee on Homeland Security and Government Reform submitted a document request to the White House seeking information on those in charge of the emergency relief effort and federal actions taken. Sen. Lieberman (D-CT), ranking member of the committee, told colleagues during the opening round of investigative hearings that the White House "has produced a very small portion of the documents we requested."

Moreover, Lieberman explained that the Department of Health and Human Services has not responded to requests to be interviewed, and the Department of Homeland Security significantly delayed such requests. Additionally, Michael Brown, the former head of the Federal Emergency Management Agency (FEMA) who resigned amid public criticism of qualifications for and competence in the position, refused to disclose if he had spoken with either the president or vice president during the Katrina disaster.

Such an uncooperative and secretive White House has made it nearly impossible for Congress to exercise effective oversight of the federal government's preparedness, whether in response to natural disaster or terrorist attack. The White House claims that it must protect the confidentiality of presidential advisors. Confidentiality, however, should not be allowed to obstruct Congress in performing its duty to ensure that American lives are protected and effective emergency systems are in place.

Stonewalling on Domestic Spying

On Feb. 6 the Senate Judiciary Committee began hearings on the NSA's warrantless domestic spying program, under which phone calls and email communications between U.S. citizens and people in certain Middle Eastern countries were monitored without obtaining a secret court order as prescribed by law. The committee is attempting to determine if the administration's actions were legal and if congressional action is necessary, either to reform the program or modify existing law to allow for its continuation.

Members of the Senate Judiciary Committee requested disclosure of communications between the White House and the Justice Department and documents regarding the program's creation and legal justification. The White House has refused this request, claiming that such information would not expand on the information already available (including the Justice Department white paper on the program). Reports have emerged, however, that there was uncertainty about the program's legality within the Justice Department. *The New York Times*, for instance, reported that the surveillance program was suspended for a brief period due to these concerns.

Sen. Arlen Specter (R-PA), chairman of the Senate Judiciary Committee, has called for a fuller explanation of how the White House believes that the NSA program is in compliance with existing legislation, including the Foreign Intelligence Surveillance Act. Sen. Dianne Feinstein (D-CA) has requested that Specter take all "appropriate steps, including the use of subpoenas," to compel the White House and Justice Department to disclose all legal documents regarding the NSA spying program.

Sen. John D. Rockefeller IV (D-WV), ranking member of the Senate Intelligence Committee, reacting to the administration's refusal, stated, "I'm deeply troubled by what I see as the administration's continued efforts to selectively release intelligence information that supports its policy or political agenda while withholding equally pertinent information that does not do that." The effectiveness of the congressional investigation will be limited if the legal documents and other information on the NSA program are not released.

Stonewalling on Jack Abramoff

Democrats and Republicans have launched efforts to end the "culture of corruption" in Washington, efforts that have picked up considerable steam since the guilty plea by disgraced lobbyist Jack Abramoff. Democrats are now calling on the White House to fully explain the relationship between Abramoff and the executive branch and the president in particular.

Democrats, it would appear, have reason to be concerned. One executive branch official, Office of Federal Procurement Policy Administrator David Safavian, resigned last September after being indicted on three criminal charges brought by the Justice Department relating to obstruction of the federal investigation into Abramoff's dealings with the federal government. Accordingly, Democrats have requested information about other relationships Abramoff had with senior executive branch officials and have also sought photos of President Bush with Abramoff. The White House has refused to provide any of the information requested by the Democrats.

Conclusion

Essential to our system of checks and balances is Congress' oversight authority that ensures the government, and the White House in particular, is performing adequately. In order to exercise this oversight, Congress and the American people need access to information regarding White House's actions. Openness is a prerequisite to a functional federal government and a safe American public - whether responding to natural disasters such as Hurricane Katrina, ensuring that constitutionally protected civil liberties and the balance of powers are respected as in the case of the NSA domestic spy program, or tackling corruption as embodied by the Abramoff scandal. The Bush administration with its "trust us" mind-set has shirked accountability that responsible leadership should readily accept.

State, Local Officials Try to Block Federal TRI Changes

Numerous state and local governments are moving to strongly oppose the Environmental Protection Agency's (EPA) proposals to relax federal chemical reporting requirements under the Toxic Release Inventory (TRI) program. In addition to comments criticizing the EPA proposal, there have been state legislation and city and county resolutions introduced to void EPA's proposed changes.

EPA did little, if any, vetting of its TRI plans with state and local officials and the decision to exclude them from the planning process appears to be costing the agency now. EPA dismissed the need for state and local input on the proposals, despite the fact that: 1) the TRI program was established to inform and empower communities; 2) many states used the TRI reporting as the foundation for their own pollution prevention programs; and 3) analysis indicates the changes will significantly reduce the amount of community-level data available (one in 10 communities with TRI

facilities will lose all numerical data on these nearby facilities).

In fact, in its rulemaking, the agency specifically asserted that the reporting changes did not have any federalism implications. Federalism issues are raised when federal regulations will have substantial direct effects on states or on the relationship between the federal government and states. By executive order, if a regulation has federalism implications, the agency that is proposing the regulation must develop a process to ensure meaningful, timely input by state and local officials in developing the regulation. Since EPA dismissed the federalism issue, the agency was able to skip consultation with state and local officials and develop the proposed reporting changes alone. Recent statements and actions of a number of state and locals officials indicate that many strongly disagree with EPA's assertion that the TRI program is simply a national database with no serious impact on state and local activities.

On Jan. 28, California Assemblyman Ira Ruskin, (D-Redwood City) announced that he would introduce state legislation to block the EPA proposals from taking effect in California. Ruskin told the *Palo Alto Weekly* that the TRI program "has been extremely useful, [and] extremely valuable," and that EPA's proposals "would potentially affect every community in California." Ruskin's proposal would require California's Environmental Protection Agency to establish a toxics reporting program using the current TRI reporting frequency and threshold levels. Additionally, in Chicago, Alderman Coleman introduced a Jan. 11 resolution to oppose EPA's proposals to cut pollution reporting.

Several city and county officials also weighed in against the proposals in comments submitted to EPA. Official comments submitted by Miami-Dade County Commissioner Katy Sorenson underscore the effect of the changes on state and local officials, explaining, "Florida officials have found the TRI program extremely helpful in setting environmental and public health policy. Accordingly, we are concerned that the current proposals will undermine these efforts, particularly at the community level." Sorenson concluded that "[t]he proposed rule puts the interest of chemical facilities squarely in front of the safety of families in the community that I represent. Therefore, I respectfully request that the proposed roll-back of the TRI be withdrawn." Joanne Godley, acting health commissioner for Philadelphia, noted, in comments opposing the reporting changes, "changes to TRI reporting would adversely impact the use of the data by the City of Philadelphia and its citizens." Godley also noted that the changes would allow 14 of the 57 TRI facilities in Philadelphia to stop reporting detailed data on their toxic releases and disposals. Godley urged EPA to "consider the ways in which the proposed Form A exemption will hinder efforts to promote pollution prevention and could lead to non-reporting of significant releases>"

The director of the Environmental Quality Division for the Denver Department of Environmental Health, Celia VanDerLoop, notes that "the proposed changes in the Form R reporting run counter to the purpose of [TRI]." VanDerLoop also reports that Denver DEH projects that one-quarter of the chemical releases and disposals tracked by TRI in the Denver area would be lost under the EPA's proposals.

For additional details on comments submitted in the rulemaking, see OMB Watch's Jan. 24 Watcher story called "EPA Gets an Earful on Plan to Reduce Toxic Reporting."

Chemical Safety Board Wants Crime Scene Procedures at Chemical Accidents

The U.S. Chemical Safety and Hazard Investigation Board (CSB) recently proposed a new rule that would require plant owners and operators to preserve critical evidence after major spills or explosions. CSB members claim that companies under investigation have, on occasion, altered or handled evidence from a chemical accident in a way that hampers a thorough investigation. The CSB is an independent federal agency charged with investigating the root causes of industrial chemical accidents, and making safety recommendations, similar to the way that the National Transportation Safety Board investigates airplane crashes.

The CSB's Jan. 4 proposed rule would establish several rudimentary procedures to preserve evidence and create a chain of evidence trail should the accident site become disturbed. The end goal is the preservation of information that is critical for determining the cause of the accident, which in turn helps other facilities prevent accidents. First, the rule would allow CSB to send an "evidence preservation notice" to an accident site, which the owner/operator would have to post in a conspicuous place, such as the area immediately adjacent to the accident site. The proposal would also require the owner/operator to notify the CSB as soon as possible when it becomes necessary to disturb an accident scene. Notification of CSB is intended to allow the agency to comment, take other appropriate actions, and have the scene observed by a third party if necessary.

CSB spokesman Daniel Horowitz told the Houston Chronicle, "Occasionally sites have been modified without adequate safeguards for all the physical evidence. A preservation order would establish a clear process for how major accidents sites should be protected." CSB Chairman Carolyn W. Merritt comments, "Often the preservation of evidence can be assured through binding agreements among all the relevant parties. In other cases, however, the rule will be necessary to protect the federal government's authority to conduct a thorough root-cause investigation."

Industry critics of the proposal claim that the rulemaking could obstruct efforts to make a site safe after an accident. Critics also note that at times CSB investigators require days or even weeks to arrive at an accident site and that strict rules requiring preservation of an accident site could cause delays and harm facility productivity.

Supporters counter that the rule allows an owner/operator to take steps to ensure the safety of a site after an accident. According to the proposal, "The CSB recognizes that emergency response and mitigation activities will take precedence over the preservation of evidence." Supporters of the rule assert that common sense should dictate that rules prevent a potentially responsible party from interfering in an investigation any more than absolutely necessary. The CSB's gathering of evidence, they maintain, is a vital step in determining the most appropriate recommendations to improve plant safety for the sake of worker and community safety.

The CSB's function is illustrated in the agency's recent "Video Safety Bulletin" that highlights the probable root cause of a Jan. 25 explosion at ASCO Acetylene Plant and offers safety recommendations. Without preservation of evidence, such detailed determinations and recommendations would be more difficult, if not impossible, to make.

The CSB recently extended the comment period for the rule to March 6, following several extension requests made by trade associations including the American Petroleum Institute, the Fertilizer Institute, the Synthetic Organic Chemical Manufacturers, as well as the U.S. Occupational Safety and Health Administration. Public comments on the rule can be directed to: Chemical Safety and Hazard Investigation Board, Office of General Counsel, Attn: Christopher Warner, 2175 K Street, NW,

Suite 650, Washington, DC 20037.

Openness: The Best Defense Against Bioterrorism

The National Research Council (NRC) concluded, in a recent report on biochemical research and bioterrorism safeguards, that an open and free exchange of scientific research and ideas is an important component of efforts to protect the country from a biochemical attack or accident. *Globalization, Biosecurity, and the Future of the Life Sciences* recommends several measures to reduce the risk of an attack using biological weapons or an accident involving biological agents and technology.

Among its recommendations for protecting the country against a biochemical threat the report stresses the need for openness of scientific research, stating, "[i]n general, restrictive regulations and the imposition of constraints on the flow of information are not likely to reduce the risks that advances in the life sciences will be utilized with malevolent intent in the future. In fact, they will make it more difficult for civil society to protect itself against such threats and ultimately are likely to weaken national and human security."

This conclusion directly contradicts recent efforts by Congress to restrict the openness of bioterrorism research. Sen. Richard Burr (R-NC) has introduced legislation to create a new, secret federal agency in charge of coordinating efforts to address biological, chemical and other threats to public health. The Biomedical Advanced Research and Development Agency (BARDA) would be the first federal agency to be completely exempt from the requirements of the Freedom of Information Act (FOIA). After Congress baulked at the blanket secrecy for BARDA, Burr began revising the legislation to create some degree of transparency for the new agency. While the new language is not yet finalized, open government advocates involved in negotiations around the legislation report that the revised bill appears still to err on the side of secrecy.

Noting that there may be rare cases where restrictions on scientific research are necessary, the NRC report makes a number of arguments in support of maintaining a free and open marketplace of ideas on biochemical research:

Improved Quality of Research

The report argues that "efforts to restrict the flow of information in the life sciences are likely to impede the ability of the scientific establishment to keep ahead of potential threats." Such restrictions would make forming collaborations between scientists more difficult, especially international collaborations. Additionally, depriving most scientists access to such a vast amount of valuable information would, in turn, slow the advancement of biochemistry research. "Great advances often come from the seemingly random blending of technical approaches and theoretical insights from different fields," according to the report. In the end, the report argues, restriction of information would cause a reduction in the effectiveness of countermeasures against bioterrorism attacks and biochemical accidents.

Difficulty of Regulating Life Sciences

The NRC report notes that it would be difficult, if not impossible, to effectively regulate and monitor biochemical research. First, the sheer scope of the field would prove difficult to regulate, with the life sciences covering many disciplines and a large number of individuals and institutions performing research in this area. The report also states that "the range and number of scientists and institutions that would be affected by any attempt to impose new information controls would be

vast and difficult to list, let alone monitor." Second, much of the research is performed in other countries with collaborations between U.S. scientists and their overseas colleagues. Without an international body to oversee and regulate such research, the U.S. government would be unable to regulate the entire field. Hence, much of the information and research would still be publicly accessible. Third, with a well established culture of openness, the life science research community would be resistant to efforts to restrict information flows and generally has been "historically open, international in scope, and widely distributed."

Excessive Financial Costs

The economic costs associated with regulating and monitoring biochemical research would be "very high," according to the report. As evidence of the high cost of protecting information, the report notes the cost of safeguarding secrets pertaining to the U.S. nuclear weapons program--$1 trillion over a 50-year period. The costs associated with maintaining the secrecy of biological research, according to the report, would be "enormously more expensive."

Emergence of a Biological Research Black Market

The report notes that "efforts to impose restrictions on the flow of information are generally unrealistic and may lead to a black market that is much more difficult to monitor and oversee." Adding to the difficulty of such efforts is the fact that "the world already has access to and cannot possibly be denied further access to the knowledge, materials, and equipment" necessary for developing biological agents that could be involved in a bioterrorist attack or biochemical accident.

In *Globalization, Biosecurity, and the Future of the Life Sciences*, the NRC makes a persuasive case that efforts to restrict the flow of biochemical research information should not be taken hastily. Not only would such efforts be difficult, if not impossible, but they could weaken research in this important field and, thereby, leave the U.S. *more* vulnerable. The report demonstrates that openness is often the best defense when it comes to national security.

Update: Criticism of Domestic Spying Remains Steady

Attorney General Alberto Gonzales defended the Bush administration's policy of warrantless domestic surveillance before the Senate Judiciary Committee on Feb. 6. The administration's authorization of warrantless eavesdropping by the National Security Agency (NSA) on international calls of U.S. citizens has come under fire since news of the program was first leaked to the press in December 2005.

Gonzales defended the legality of the program to committee members, including Committee Chairman Arlen Specter (R-PA), who challenged the NSA domestic spying, arguing federal law "has a forceful and blanket prohibition against any electronic surveillance without a court order."

Specter went on to suggest that the special court established by the 1978 Foreign Intelligence Surveillance Act (FISA) review the legality of the NSA program.

In addition to the legal scrutiny it has received, the NSA program has recently been faulted for its apparent lack of efficacy. According to intelligence sources interviewed by the *Washington Post*, nearly all of the thousands of international calls by Americans that were subject to NSA eavesdropping turned out to be investigative dead ends.

The *Post* article notes that the program impacts many more individuals than those 5,000 or so who had their phone calls recorded, as "[c]omputer controlled systems collect and sift basic information about hundreds of thousands of faxes, e-mails and telephone calls into and out of the United States before selecting the ones for scrutiny by human eyes and ears." The program, it seems, has resulted in little more than the accumulation of enormous amounts of data about harmless communications that is stored by the federal government.

Foxes in the Henhouse: OSHA, MSHA Nominees Appear Pro-Industry, Anti-Worker

Employing an all-too-familiar strategy, the White House has put forward two industry-insiders as its nominees for the top posts at the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA).

While the nominee to lead MSHA, Richard Stickler, has a resume including 30 years in the mine industry but very little experience dealing with the safety and health of miners, Edwin Foulke, the administration's choice to head OSHA, has worked as a lawyer *protecting* companies from liability for safety and health violations.

No Stickler for Safety

In the wake of the recent mine tragedies, Senate Health, Education, Labor, and Pensions Committee Chairman Michael Enzi (R-WY) has grown anxious to fill the top spot at MSHA, but the Bush administration's nominee, Richard Stickler, is a relative unknown, with little background in health and safety issues and strong ties to industry.

Stickler worked for BethEnergy Mines of Amity, Pennsylvania for 30 years, before heading the Pennsylvania Bureau of Deep Mine Safety from 1997 to 2003. His nomination last September to the post of assistant secretary for mine safety brought him out of a two-year retirement.

During a Jan. 31 hearing with both Stickler and OSHA nominee Edwin Foulke before the Senate committee, Stickler was asked if he planned to impose new or more stringent regulations in response to the recent mine tragedies. Investigators now believe that better communication devices, for instance, could have made it possible to locate the miners trapped at Sago more quickly, and adequate supplies of oxygen could have kept the miners alive until rescuers reached them. Despite this compelling evidence that new regulation to keep miners safe is in order, Stickler responded to questioning on the subject by stating that he planned to study the regulations on the books and make necessary changes, but that "generally [he] think[s] the current laws are adequate."

Despite long-standing evidence of the efficacy of these safety changes, the mining industry has been resistant to implementing new safety technology without the nudge of regulation. Stickler even admitted that technological innovation had "done more to improve health and safety during my career than any other factor." Yet he dodged requests by lawmakers that MSHA act as a spur for technological innovation in mine safety.

According to the United Mine Workers (UMWA), mines run by Stickler had accident rates double that of the national average for six of eight years, including two fatal accidents at a mine Stickler managed for five years. The United Mine Workers has opposed his nomination to lead the federal

agency and previously opposed his 1997 nomination to the Pennsylvania mine safety department. According to a UMWA letter to President Bush opposing the nomination, "[t]he continued tenure of Mr. Stickler will have a grave and immediate impact on state's miners."

Despite the decline in mine-related fatalities over the past several decades, mining remains one of the most dangerous occupations.

Foulke's Anti-Worker Record

Edwin Foulke, Bush's nominee to head the Occupational Health and Safety Administration and a lawyer for the union-busting law firm Jackson Lewis, has a wealth of experience related to occupational health and safety. In fact, as his law firm's head of OSHA compliance, Foulke has helped protect industry from health and safety regulations for most of his career. If appointed as administrator of OSHA, Foulke will be able to help his former clients even more--this time from the inside.

Foulke heads the firm's "Workplace Safety Compliance, including Violence Prevention" practice, whose stated missions is "to assist in compliance efforts and to reduce the likelihood of a citation, we advise employers in developing safety programs and conducting preventive self-audits to pinpoint and remedy potential legal vulnerabilities."

As a partner with Jackson Lewis, Foulke has challenged several workplace safety regulations, including penning an article for the South Carolina Bar denouncing the ergonomics standards. Foulke told a small business trade press that the short-lived ergonomics standards of the Clinton Administration "should be called the OSHA Lawyers' Full Employment Act" and suggested that voluntary standards would have been sufficient. Foulke also recommended voluntary standards over mandates to the senate committee, even though a 2004 Government Accountability Office investigation found that OSHA's voluntary standards were of unproven effectiveness. Foulke has also testified before Congress on behalf of the Chamber of Commerce, the nation's largest business trade association.

Foulke's law firm, Jackson Lewis, is also well known for its practice opposing organized labor, including "an attempt to undermine negotiations at a Borders book store and two separate lengthy, expensive union-busting campaigns against nursing home and home health car workers in New York facilities." Jackson Lewis calls its strategy "preventative labor relations."

In 2004, 5,700 workers were killed and over 4 million were injured or became ill because of their jobs. The rate of worker injuries actually increased in 2004 from previous years. Despite these disturbing trends, the administration continues to nominate individuals with, at best, a lack of health and safety experience and, at worst, records hostile to health and safety measures. The appointment of Foulke would mean that two of the three top jobs at OSHA would be filled by industry-friendly attorneys rather than health and safety experts. Deputy Assistant Secretary Jonathan Snare is a former lobbyist for Metabolife and a member of the Republican National Lawyer's Association.

Congress to Have Short Year; Appropriations Work Likely to Suffer

Each year the congressional leadership is responsible for setting Congress' legislative calendar, and this year that calendar will be tightly packed with the smorgasbord of issues Congress must tackle in the coming months. The legislative work Congress fails to finish, however, may be what makes

headlines in 2006. This year boasts the fewest legislative days for Congress in twenty years, and this compressed election-year schedule is sure to make finishing appropriations bills before the end of the fiscal year on Oct. 1, a task lawmakers find difficult even with more ample time, next to impossible.

In 2006, the leadership has decided to devote 72 days, or a little over two months, to official legislative business. When Mondays and Fridays are included in this total (voting generally only takes place Tuesday through Thursday), this number rises to 125 days. Since 1985, Congress has allocated an average of 152 days per session (including Mondays and Fridays) to legislative work.

Featured high on the list of reasons for this year's limited schedule are the upcoming midterm election and the accompanying pressure on lawmakers to hit the campaign trail early and often. Yet, in previous election years, Congress allocated significantly more time to legislative work than it has for 2006. In 2002, for example, Congress was in session for 149 days, and in 2000 lawmakers clocked 141 days.

The election notwithstanding, Congress, it seems, spends too *little* time actually in session and it shows. In 2000, the House and Senate completed only two appropriations bills by the Oct. 1 deadline. In 2002, no bill was completed on time, and Congress worked through February--almost halfway into the new fiscal year - finishing appropriations work only after passing 12 continuing resolutions to keep the government afloat.

These recent failures by Congress to finish appropriations bills on time--arguably its most important role--should be cause for GOP leaders in Congress to consider scheduling more legislative days and fewer weeks in recess. It is Congress' responsibility to fund the federal government and the programs that depend on federal dollars, while ensuring the process allows for adequate debate, transparency, and oversight. Sadly, the draw of the campaign trail (and the substantial fundraising it involves) has coaxed the attention of too many members of Congress away from the job they were elected to carry out.

The end result is a shoddy and hastily thrown together appropriations process, seemingly inevitable continuing resolutions that almost always fund national priorities at significantly reduced levels, and far less oversight and accountability in Congress for how taxpayer's dollars are spent.

Final Budget Bill Passed; Tax Bill Sent to Conference

A little over a month into 2006, Congress continues its effort to finish extraneous budget reconciliation bills from 2005. The reconciliation bills, which were laid out nearly a year ago in the April budget resolution, took up much of Congress' already-limited time last fall and winter and have laid out a number of extremely irresponsible fiscal policies.

The budget bill, which finally passed on Feb. 1, will cut almost $40 trillion over five years from funding for mandatory programs, while the tax bill could potentially cut up to $70 billion in taxes - primarily benefiting the wealthy. Together, these two bills will significantly increase the deficit, further enriching the wealthy at the expense of low- and middle-income Americans.

The final House approval of the budget reconciliation was, as anticipated, extremely close. The bill passed by only two votes (216 - 214). Out of all 435 House members, only two Republicans and one

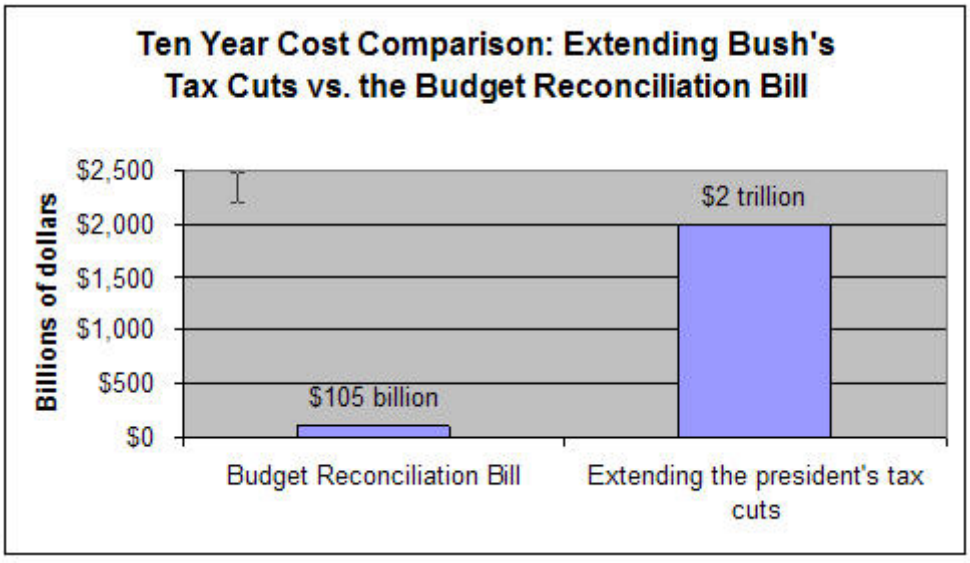
Democrat did not vote. All House Democrats voted against the bill, with the exception of Earl Blumenauer, who was out of town.

Thirteen Republicans broke with their leadership, voting against the misguided bill; they were Reps. Gerlach (PA), Ney (OH), Johnson (IL), Jones (NC), Latourette (OH), Leach (IA), McHugh (NY), Paul (TX), Ramstad (MN), Simmons (CT), Sweeny (NY), Smith (NJ), and Wilson (NM). The Emergency Campaign for America's Priorities, a coalition of labor unions, service providers, low-income advocates, budget think tanks, public policy groups, should be commended for mobilizing much of the public pressure on these moderate Republicans leading up to the vote.

The budget bill imposes many substantial changes on entitlement programs, Medicaid, Medicare, welfare, child support and student loan programs. As *The Washington Post* elegantly summarized, this move by Congress to slow the growth of entitlements will mean "[w]omen on welfare are likely to face longer hours of work, education or community service to qualify for their checks. Recipients of Medicaid can expect to face higher co-payments and deductibles, especially on expensive prescription drugs and emergency room visits for non-emergency care. More affluent seniors will find it far more difficult to qualify for Medicaid-covered nursing care."

Interestingly, the final vote came one day after President Bush announced in his State of the Union address, "Our government has a responsibility to help provide health care for the poor and the elderly, and we are meeting that responsibility." Just how our government will continue meeting that responsibility, despite significant funding cuts for government health programs, was not addressed by President Bush. Adding to healthcare concerns, these cuts came on the heels of new census data that indicates more than 46 million Americans are living without health insurance. Within the $40 billion in cuts to entitlement spending over the next five years, Medicaid and Medicare will bear the brunt of 27 percent of those cuts.

Disingenuous rhetoric aside, the cuts in this budget bill come into full perspective when compared with the cost of extending Bush's 2001 and 2003 tax cuts, a widely stated goal of his second term. Over a 10-year period the cuts from this budget bill will save approximately $105 billion, whereas the 10-year cost of extending the tax cuts is estimated to reach over *$2 trillion*.



Unlike the budget reconciliation bill, the tax cuts bill has yet to be completed by Congress. The Senate voted 66 -31 on Feb. 2 to approve a $70 billion version of the tax reconciliation bill. The bill includes extensions of a variety of popular tax breaks, such as business research and development tax credits and the costly one-year fix to keep the alternative minimum tax (AMT) from hitting middle-income taxpayers in 2006.

A final package must still be negotiated with the House, a majority of whose members are in favor of a very different tax bill. The House version does not include any AMT relief for 2006, instead extending rate cuts for capital gains and dividends taxes - cuts not set to expire for two full years.

Regardless of the specifics of the bill that will emerge from conference negotiations, its cost is sure to eradicate any savings achieved by the budget cuts bill already passed. In fact, the tax cuts bill will add tens of billions to the national deficit.

Initial Analysis of the President's 2007 Budget

The president's Fiscal Year 2007 (FY 07) budget would set the nation on a dangerous fiscal path and does nothing to honestly address the federal government's looming budgetary challenges. The budget--totaling $2.77 trillion--would make permanent the president's first-term tax cuts, which primarily benefit the wealthy, and pay for those cuts in part by cutting some entitlement programs and drastically reducing domestic discretionary spending (outside of homeland security and defense). Despite the spending cuts, deficits will continue to rise each year after President Bush leaves office if this budget is enacted.

While the accuracy of its portrayal of likely future expenditures and costs of tax cuts is improved over last year's, the president's budget still falls far short of an honest depiction of our country's current predicament and outlook. New to the budget this year is some spending for the ill-fated Social Security overhaul presented by the president last year. Some war spending (although not all of it) is also included for the first time, as well as the cost of a one-year Alternative Minimum Tax fix. While the first budget to show the initial costs of making the president's tax cuts permanent, however, this budget misrepresents the long-term fiscal picture and the havoc such cuts could wreak were they enacted wholesale.

This budget would be devastating, eroding the nation's tax base, forcing harsh cuts to non-defense discretionary spending (*16 percent* over five years), and continuing to promote the administration's dangerous and biased "program assessment" tool.

Extension of Tax Cuts Projected for One Year

This is the first year that the impact of extending the president's first-term tax cuts is recorded in his budget. Because the administration chooses to submit five-year budgets and most of the president's tax cuts expire on Dec. 31, 2010, previous budgets failed to present a realistic picture of the impact of extending those tax cuts. This budget is only marginally better.

The president's budget shows extension of the tax cuts for one year--in 2011--the last year of the five year budget window. According to the White House, these cuts will cost approximately $119 billion in 2011 alone--more than half the amount needed to close the budget deficit that year, estimated to be $225 billion.

The president, as he explained in his State of the Union address, would like to make all of his tax cuts permanent. His budget, however, does not show the year-by-year details of the revenue impact of that policy change beyond 2011. Instead, it simply presents the total cost over 10 years for extending the tax cuts to be $1.7 trillion without factoring in service on the national debt, which brings the estimated cost up to as much as $2 trillion.

Extending the tax cuts will sharply increase budget deficits (and thus the national debt) after the president leaves office. This, coupled with other changes proposed by the president, would cause a steady deterioration of the nation's fiscal health, adding $3.6 trillion to the national debt by 2011, according to the president's own budget projections. This represents a monumental 46 percent increase in the size of the debt over 2005 levels. Looking at the president's policies over the long-term, the year 2009, when he has pledged to halve the deficit, seems like the calm before the storm.

Domestic Discretionary Spending Squeeze

As with previous budgets, discretionary spending is slated for large cuts in the FY07 budget. Discretionary spending includes programs from job training and environmental protection to scientific research, human services, veterans and education programs. Accounting for only a small percentage of the overall budget, discretionary spending would bare a disproportionate share of the proposed cuts in FY07.

Particularly alarming are not any of the specific cuts in FY07, but the president's vague plans for the following years. The president proposes discretionary spending caps for each year until 2011. Defense spending would receive its own cap from 2006 to 2008. From 2009 to 2011, defense would be combined with non-defense spending under one cap. Highway funding and mass transit programs would each have their own category from 2006 through 2011, and would not compete with other programs.

Under this accounting, homeland security would be part of the non-defense discretionary cap and would compete with human services and other programs. The president has made some assumptions about how much non-defense spending would go to homeland security, but if Congress increases that amount, it will have to lower spending in other non-defense discretionary programs.

Under the president's assumptions, non-defense programs--outside of homeland security--would be cut a whopping 16 percent between FY 2006 and FY 2011 when adjusted for inflation. This is more drastic than last year's budget, which we calculated reducing this category of spending by 14 percent over five years (see http://www.ombwatch.org/budget/FY06budgetimpactonnonprofits.pdf).

	Actual 2005	2006	2007	2008	2009	2010	2011	% Change 2006-2011	% Change Adj. Inflation 2006-2011
Defense	390	432	460	482	501	521	542	25.5%	10.8%
Homeland Security from Non-Defense	36	38	40	42	42	43	45	18.4%	4.6%
Non-Defense	389	373	370	371	374	364	353	-5.4%	-16.4%

Particularly hard hit by such cuts would be nonprofit service providers and research organizations.

In light of the obvious increase in need that will result from a population that is both aging and growing, such an enormous cut to spending would be devastating.

PART Scores and Continued False Rhetoric About Performance Measures

Once again the president's budget places still more emphasis on performance management and the Program Assessment Rating Tool (PART). Though touted by the current administration as a consistent, unbiased way to determine the success or failure of government programs, the tool actually contains numerous inconsistencies and political and ideological biases, documented by OMB Watch (see http://www.ombwatch.org/regs/2005/performance/PARTbackgrounder.pdf).

OMB initially tested the PART on a limited number of programs (67) in the spring of 2001. It was then reviewed by the Performance Measurement Advisory Council, an ostensibly independent committee that lacked stakeholder representation or public interest perspectives. OMB made minor revisions, but the format of the PART remained generally the same.

Each year since, the PART has been used on 20 percent of all government programs/activities (approximately 200 per year). With the release of the FY07 budget, the PART has now been used to review 80 percent of federal programs (793).

This year OMB has simultaneously made PART data more and less accessible. OMB has increased the PART's exposure and simplified the data by launching a new website with a user-friendly, searchable database format that displays less information. In doing this, OMB has removed the comprehensive information that the White House once published, which would allow analysts, federal employees, and regular citizens to get an overview of PART and look across the entire universe of information for broader patterns across programs.

Like last year, the president's budget does not present a list of the 140 programs slated for reduction or elimination due to their ineffectiveness or irrelevance. The lack of transparency further calls into question whether poor PART scores are, as the administration claims, the real reason behind attempts to abandon these programs.

This seems par for the course with the PART, a political tool with scoring methodology that is inconsistent and opaque. The PART continues to be a political lever the Bush administration pulls to further ideological goals under a smokescreen of good government and results.

You're Doing a Heckuva Job, Georgie: Debunking the State of the Union

In his Jan. 31 State of the Union address, President Bush spoke on many issues vital to the country including foreign policy, the economy, and health care. As is often the case in the annual address, the president offered far fewer specifics and suggested fewer solutions than many Americans would have liked to hear. Still, the president did manage to articulate a few specific points, some suggesting policies and others spinning the facts. To follow is a look behind a few of the more misleading statements made by the president in the address.

Statement #1: "In the last two-and-a-half years, America has created 4.6 million new jobs--

more than Japan and the European Union combined."

While the U.S. may have added 4.6 million new jobs over the last two and a half years, there are a number of hidden issues within this statement. The first is that Bush chose to refer only to the last two-and-a-half years, as opposed to the growth during his entire Presidency or to previous economic recovery periods. This is because his record on job growth, in reality, is not all that impressive. Recent job gains lag far behind other post-recession recovery periods. If he had stated job growth from the beginning of his presidency, for example, it would have brought the net number of added jobs down by 2 million over the entire five-year period. The truth is President Bush has presided over one of the worst recovery periods in the history of the country in terms of job creation.

Additionally, it is ironic Bush mentioned job growth in Japan and the EU. Perhaps America has added more net jobs over the last two plus years than these two countries, but what kind of jobs? Do they provide health care? What are the wages?

The minimum wage in America has been stuck at an unacceptable $5.15/hour for almost ten years, and real wages fell by more than 0.5 percent over the last twelve months, after falling by 0.7 percent in 2004. The average American household earns almost $2,000 less now ($44,389) than when President Bush took office ($46,058) after adjusting for inflation. Simply adding jobs, if health benefits and living wages are not taken into consideration, is far less of a triumph than Bush has made it out to be.

Statement #2: "Our government has a responsibility to help provide health care for the poor and the elderly, and we are meeting that responsibility."

This is perhaps one of the most egregious assertions made by the President in the entire State of the Union. He claims the government is meeting this responsibility, yet almost forty-six million Americans live without health-insurance today, eight million of whom are children. Even worse, one day after making this statement, the House of Representatives passed the final version of the budget reconciliation bill, which cuts almost $40 billion from entitlement spending over five years. Medicaid and Medicare shouldered 27 percent of the brunt of those cuts. With forty-six million Americans already uninsured, it is hard to believe that a government so invested in cutting taxes for the wealthy and cutting the budget for everything else is truly dedicated meeting the health needs of the poor and the elderly.

Statement #3: "I ask you to join me in creating a commission to examine the full impact of the baby boom retirements on Social Security, Medicare, and Medicaid. The commission should include members of Congress of both parties, and offer bipartisan answers."

Bush's suggestion of creating a commission to deal with the problem reflects the lackadaisical effort on the part of this administration to seriously explore realistic solutions to what is most likely one of the greatest current threats to the economic stability of our country. Appointing a bipartisan commission to study the long-term sustainability of entitlement programs is an easy answer to a tough problem and it's unclear what this commission will really be able to accomplish. Most likely it will only delay serious negotiations over solutions.

In last year's State of the Union address, the President called for appointing a bipartisan panel to look into reforming the tax code, which he did because "Americans are burdened by an archaic, incoherent federal tax code." A year has now gone by since this panel was convened, and there is

nothing to show of it. The President did not even mention tax reform in his State of the Union address and on Feb. 1, former Sen. John Breaux, one of the chairmen of the president's own tax panel, criticized the administration in testimony before Congress for remaining silent on the issue.

It is possible a bipartisan commission could tackle the problem of growing pressure on entitlement programs and come up with an effective solution. It is more likely, however, that their taxpayer-funded efforts will do little more than produce a solution that is not feasible in the current political environment. If Bush were truly dedicated to preparing the U.S. fiscally for the rise in entitlement spending that will take place when the baby boomers retire en masse, he would not be pushing to make his tax cuts permanent--adding hundreds of billions of dollars to the debt every year.

Statement #4: "The American people have turned in an economic performance that is the envy of the world."

It is particularly important to note that Bush chose to frame America's economic performance in a context relative to the rest of the world, as opposed to one comparing current economic performance with that of years past. If the United States were truly performing well economically, national consumption would not be far outweighing national production, which has led to extremely high trade deficits over the past few years.

It is true that productivity growth and inflation under Bush have been relatively good, but it is hard to ignore that the U.S. is racking up debt with foreign countries like China at an unprecedented rate. Foreign countries are financing our current budget deficits, and if Bush succeeds in making his tax cuts permanent they will be financing budget deficits for many more years to come. Bush's claims of a strong economy might be true if looking at a focused picture of just GDP growth or corporate profits. But who is benefiting from any sort of GDP growth? It appears much of the growth is going mainly to a small section of wealthy individuals and corporations, while little of it is materializing in increased assets or savings for those who need it the most.

The national savings rate in 2004, for example, was 1.8 percent (savings is the difference between after-tax income and all expenditures). In 1994 the savings rate was 5 percent, and a quarter of a century ago, savings rates averaged in the double-digits. Over the last five years, the average annual household income has fallen 3.6 percent after adjusting for inflation--dropping from $46,058 to $44,389 according to Census Bureau information. Consumers are still spending, but pocketing less and less, which increases the risk of families experiencing economic failure.

Additionally, a new study by the Center on Budget and Policy Priorities and the Economic Policy Institute indicates that income inequality has grown significantly in the U.S. over the past two decades. Not only is national savings down, but the people who need to be saving the most are finding it harder and harder to do so. Our recent "economic performance" has not been shared by most Americans.

Statement #5: "Our economy grows when Americans have more of their own money to spend, save, and invest... I urge Congress to act responsibly and make the tax cuts permanent."

Statistics show that a majority of the benefits of the tax cuts over the last few years under Bush's leadership have gone to the wealthy; thus they are the ones who get to spend, save, and invest more. The President's first term tax cuts caused individuals earning over $1 million per year to see an

average of $103,000 in tax cuts in 2005 alone. In addition, two new tax cuts went into effect this January 1, which give 97 percent of the benefits to households that make over $200,000 annually.

Continuing these trends of rewarding wealth over hard work, the GOP leadership in Congress is anxious to permanently repeal the estate tax, an act that would benefit the wealthiest 0.27 percent of Americans. These leaders also wants to keep tax rates on capital gains and dividends very low, which would mostly benefit a small number of Americans who make their money off their wealth rather than through work.

Further, most studies show any economic benefits brought on by the tax cuts will eventually be erased due to the enormous increase in deficits and the debt that has caused a dramatic decrease in the national savings rate. The Joint Taxation Committee in Congress reported in 2003 the economic benefits were "eventually likely to be outweighed by the reduction in national savings due to increasing Federal government deficits." Outgoing Federal Reserve Chairman Alan Greenspan also repeatedly urged Congress to extend tax relief *only if it was offset and did not cause the deficit to grow.*

Statement 6: "By passing [cuts to non-defense, discretionary spending], we will save the American taxpayer $14 billion next year--and stay on track to cut the deficit in half by 2009."

President Bush attempted to link non-security domestic discretionary spending to the increases in the deficit, when in fact it has been anything but such spending that is driving the current budget shortfalls. According to the Center on Budget and Policy Priorities and the Center for American Progress, non-defense discretionary spending has dropped 0.1 percent between 1999-2000 and 2006, from 3.2 percent of the economy to 3.1 percent.

Further, the president's continued claims of cutting the deficit in half are closer to fiction than to fact. While it may be possible for the deficit to be cut in half in 2009 using skewed calculations, previously inflated budget projections and harsh cuts to social safety net programs, those same deficits are projected to increase for decades after 2009 if the president's tax cuts are made permanent.

Making the tax cuts permanent would cost more than $2 trillion dollars over the next ten years, further crippling the federal budget while overwhelmingly benefiting high-income Americans, all while providing questionable economic benefits. This would not chart a course to provide fiscal support for the few new initiatives mentioned in his address, or bring the nation's fiscal house into order again. Continuation of this administration's plans, as widely acknowledged by all sides of the political spectrum, will only dig us deeper into huge mountains of debt.

Conclusion

Through the entire State of the Union address, Bush's rhetorical choices give insights into his priorities. He never mentioned the words "middle-class," nor did he explain how his tax policies would help the majority of Americans. Only once during the entire speech did he refer to poor Americans, and that was when he said, "Our government has a responsibility to help provide health care for the poor and the elderly, and we are meeting that responsibility." (see Statement #3 above.) Bush used the word "poverty" only once and it was in reference to foreign regions. He never discussed the steady rise in poverty rates under his leadership or the 37 million Americans who live in poverty every day. He spent hardly any time speaking about the aftermath of Hurricane Katrina and the slow progress being made to reconstruct the Gulf Coast. He failed to speak about fixing the

Alternative Minimum Tax, which is ensnaring millions more middle-class taxpayers every year. He also did not mention the transition to the new prescription drug benefit, the implementation of which has caused problems for many already this year.

An address on the state of the union should include the real facts and present a straightforward view of our country for all to see. The American people deserve an honest portrayal of where our country stands, and specific proposals to solve the problems that lie ahead. The president, unfortunately, did not deliver on either front.

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Tough Negotiations Ahead for Tax Bill

House and Senate leadership have appointed conferees for long-awaited negotiations on the 2005 tax reconciliation bill. The conference, which will convene following the President's Day recess during the week of Feb. 27, will address differences between the versions of the bill passed by the House and Senate. An important issue of contention is the extension in the House version of tax cuts on capital gains and dividends, a move that would not only prove extremely costly but also disproportionately benefit the wealthiest Americans.

The House and Senate appointed an uneven number of conferees, potentially giving the House a leg up in the negotiations. This could also cause negotiations to take longer than expected and possibly further delay the enactment of the bill. Notwithstanding this unusual situation, the negotiations will be difficult because of the significant differences in the bills that outline starkly different priorities for the House and Senate.

The Senate bill provides $59.6 billion in tax cuts, including $7 billion in Katrina-related provisions, and extends the Alternative Minimum Tax (AMT) patch for one year (at an almost $30 billion cost), but does not include capital gains and dividends tax cuts. The House bill, on the other hand, provides no Katrina or AMT relief, yet extends low rates on capital gains and dividends through

2010 at a cost of $20.6 billion. While the House bill's total net cost--$56.1 billion--comes to less than the Senate bill, they both will add substantially to the deficit and erase any budget savings achieved through controversial reconciliation spending cuts enacted earlier this month.

Despite the Senate's exclusion of an extension of lower capital gains and dividends rates, a number of Senators are hoping the final version will include this measure. Last week, the Senate voted on a motion by Senate Finance Committee Chairman Charles Grassley (R-IA) instructing conferees to include both a capital gains and dividends rate extension, as well as an extension of AMT relief. The motion passed 53-47, however four Republican Senators voted against the motion: Lincoln Chafee (R-RI), Olympia Snowe (R-ME), George Voinovich (R-OH), and John Warner (R-VA). Two Democrats voted in favor of the motion: Ben Nelson (D-NE) and Bill Nelson (D-FL).

Sen. Ted Kennedy (D-MA) offered a competing motion instructing conferees *not* to include an extension of the lower capital gains and dividend rates, however his motion failed by the same margin (47 - 53). This vote demonstrates a difficult road ahead for Republicans leaders if the capital gains and dividend extension is included in the final bill because they may have to overcome a 60-vote point of order if Senate budget rules are violated.

Further complicating negotiations, Senate Majority Leader Bill Frist (R-TN) sent a letter to Grassley regarding the tax reconciliation conference report. The letter explained Frist would not send a report to the floor that did not include an extension of capital gains and dividends rates, and suggested that Senate conferees drop the AMT patch and the extension of other expiring tax cuts from the bill to make room for those cuts. This approach would not only conflict with the priorities laid out by the Senate in its last bill, but would also prove to be politically difficult for a number of moderate Senators of both parties whose constituents are much more concerned with AMT relief than the extension of capital gains and dividends rates. Finally, the capital gains and dividend cuts do not expire until 2008 so there is no need to extend them this year. With his letter to Grassley, Frist has shown his willingness to sacrifice those cuts (some of which benefit middle class families) in favor of giving more benefits to extremely wealthy Americans.

Conferees from the Senate are Grassley, Ranking Member Max Baucus (D-MT), and Senate Republican Policy Committee Chair Jon Kyl (R-AZ). The House conferees are Reps. Dave Camp (R-MI), Pete Stark (D-CA), and Jim McCrery (R-LA), Ways and Means Committee ranking member Charles Rangel (D-NY), and Ways and Means chairman Bill Thomas (R-CA).

Frist Vows Estate Tax Vote This Spring

In a Feb. 10 speech, Senate Majority Leader Bill Frist (R-TN) told a national gathering of conservatives in Washington, D.C. he would "do everything in [his] power to bury the death tax once and for all," and said he plans to bring estate tax repeal legislation to the floor in May. These remarks, which were delivered at a three-day Conservative Political Action Conference, highlight Frist's desire to gain favor with his base by pushing for estate tax repeal. While full repeal is favored by a number of conservative groups, Frist lacks the 60 votes needed in the Senate to pass such a measure. Frist's remarks also illustrate his intention to use the estate tax as an campaign issue for Republicans once again this year, forcing some Senators up for reelection in November to cast tough votes.

The Senate was scheduled to vote on the estate tax after returning from its August recess in 2005. Hurricane Katrina, however, shook up the legislative calendar and the vote was postponed indefinitely. Sen. Jon Kyl (R-AZ) was the key GOP senator on the estate tax last year and attempted

to negotiate a deal with Democrats that included a higher exemption rate and much lower tax rates. As the Center on Budget and Policy Priorities found, however, many of the suggested "reform" proposals put forth by Republican negotiators were little better than full repeal. Should Frist fail to garner the 60 votes needed for full repeal, it is likely we will see a similar attempt to pass a bad "reform" of the estate tax that is just as damaging as full repeal.

More Dishonest War Budgeting from White House

President George Bush is continuing his piecemeal approach to funding U.S. war efforts in Iraq and Afghanistan, despite rebukes by Congress including last year's stinging one by Sen. Robert Byrd (D-WV). On Feb. 17, Bush sent another supplemental request of $72.4 billion for war funding for the remainder of this fiscal year, leading critics to note that it is impossible to know how much the war efforts are really costing.

The latest request from the White House puts the total amount requested for FY 2006 at $115.3 billion, more than double the amount the president included in his most recent budget request for FY 2007, which was only $50 billion. Unlike previous years, the president actually did include funding in his 2007 budget request for the wars, but given the historical rate of spending by the Defense Department over the last three years, the request is less than half of what will likely be necessary. By continuing to omit the true expected costs of the wars, the administration's budget projections remain significantly skewed and the president continues to be dishonest with both Congress and the American people about not only the cost of the wars, but also the nation's overall fiscal outlook.

This sentiment has been shared by members of Congress of late. On Feb. 8, two days after the president's FY 2007 budget proposal was released, Budget Committee member Rosa DeLauro (D-CT) and Rep. Rahm Emanuel (D-IL) sent a letter to Budget Committee chairman Jim Nussle (R-IA) asking him to honor his public support for having a "realistic and honest [picture of the] long-term funding for the wars." Their letter refers to a statement Nussle made at the opening of a 2003 hearing on budgeting practices for the wars in Iraq and Afghanistan, which included the following entreaty:

> Can we continue to fund our war efforts on this type ad-hoc basis? I think most of us would agree that we cannot. This Committee - and this Congress - has to have a solid plan - a blueprint - to set our priorities for the year. And to do that, we must be able to gather whatever information is needed to put together a credible and responsible budget for this nation.

House Appropriations Committee Ranking Member David Obey (D-WI) was equally frustrated with the president's seemingly disjointed plan. In a statement, Obey explained that, in the nearly three years since the start of the Iraq war, Congress has yet to receive accurate information about the expected duration or cost of the war. "Hundreds of billions of dollars later," Obey went on to say, "the administration continues to hide the war's full costs with piecemeal requests so that they don't have to take responsibility for its impact on the budget and can continue down a fiscally reckless path." Since the beginning of the conflicts, Congress has approved $334.1 billion for the two wars with another $115.3 billion likely to be approved before September.

Unfortunately, Congress is no closer to a solid plan from this administration than when Nussle expressed the need for it in late 2003. As the stonewalling continues, the administration's lack of detail on the long-term costs appears to be sparked less by an unwillingness to share its plans with

Congress, and more by the reality that the administration does not have a plan at all.

Lobby Reform Continues to Overlook Budget Process

As Congress toils through the process of establishing self-regulation of lobbying and ethics issues, most proposals continue to overlook budget process reform that is critically needed to address corruption and open the process in Washington. Despite new legislation recently introduced that to some extent addresses the role of the budget process in the larger reform picture, no proposal gets all the parts right, nor does any go far enough to truly have a significant impact.

Since we last reported on congressional efforts to respond to the fallout of the Jack Abramoff scandals, a few new bills have been introduced that contain positive proposals to bring more transparency to the legislative process, particularly concerning budget earmarks. Sens. Diane Feinstein (D-CA) and Trent Lott (R-MS), Sen. Barrack Obama (D-IL), and Sen. John McCain (R-AZ) have introduced proposals to outlaw the inclusion of extraneous provisions in conference reports, open up conference committee procedures, and curtail the appropriations of funds for unauthorized programs or projects.

The resolution cosponsored by Lott and Feinstein (S. Res 365) would do three things. First, it would establish a 60-vote point of order against any provisions or language in conference reports that has not been separately approved by either chamber. Second, it would require all bills, amendments, and conference reports (both appropriations and authorizations) to include a separate list of all earmarks in the measure, the identity of the member who proposed the earmark, and an explanation of the essential government purpose of the earmark. The resolution would also require members to file requests for earmarks with the Secretary of the Senate and have those requests printed in the Congressional Record. Finally, it would require all conference reports to be available to members and the public on the Internet at least 24 hours in advance of consideration of the report.

Unfortunately, the 24-hours waiting period in the resolution is too short to allow for full analysis of long and complex conference reports, and deliberations and details of conference committees will remain largely hidden under the Lott/Feinstein resolution. Obama's bill (S. 2179) would resolve this by opening conference committee deliberations. It would establish the sense of the Senate that all conference committees be open meetings of all conferees that are publicly available or televised; that adequate notice of such meetings be given, and that members be allowed to engage in full debate of pertinent matters.

In addition, S. 2179 would require one representative of the majority and minority parties to sign a pledge that all Senate conferees had the chance to vote on all amendments and other proposition of the committee; that any motions to instruct conferees have been considered and publicly voted on in the conference; and that the minority was offered the chance to submit minority views for the joint statement of the managers. Finally, Obama's bill would require a list of all earmarks in bills to be available to members and the public (via the Internet) at least 72 hours before consideration; the bill would include a waiver for this requirement with approval of two-thirds of the Senate.

Both the Obama and Lott/Feinstein bills have merit. The extended wait period before consideration in Obama's would allow for thorough analysis of the earmarks in bills while not excessively slowing down the work of the Senate. Also making materials available on the Internet, not simply in the Congressional Record, is crucial to creating transparency for the process. The Lott/Feinstein bill would limit the ability of powerful members of the House and Senate who can insert provisions

agreed to during back-room deals without the knowledge or approval of either full chamber.

McCain's bill (S. 2265) goes further than either the Lott/Feinstein or Obama legislation, allowing senators to raise a point of order on the floor against any earmark in an appropriations bill, unless the earmark has been authorized in separate legislation. Sixty senators would then be required to support the earmark, or it would be stripped from the appropriation bill and the level of funding allotted to the bill would be reduced. McCain would also require entities receiving federal earmarked funds to disclose any lobbying expenditures they made during the previous year.

McCain's requirement to remove not only the earmark, but also to lower the generic funding in appropriations bills is truly unique among this year's budget process reform proposals, in that it would actually lower the level of spending if earmarks are removed. McCain's proposals would transfer some power from the appropriations committees to the authorizing committees by exempting authorized earmarks from a point of order, which if enacted would likely create tension between the chairs of appropriation and authorizing committees.

No one single proposal is ideal and a combination of the three would do the most good in the current political environment on Capitol Hill. OMB Watch supports Lott/Feinstein bill's requirement that all bills, amendments, and conference reports for both appropriations and authorizations include a list of earmarks, the requesting Member's identity, and an explanation of the essential government purpose of the earmark. However, we believe that the waiting period should be extended from 24 to 72 hours, as Obama proposes, and the definition of earmark should be expanded to include spending and authorizations, as well as "limited tax benefits," as proposed by Rep. David Obey (D-WI). Finally, members should be required to disclose who has requested the earmark, and, if a lobbyist, on whose behalf the request is being made, and all earmark disclosure information should be made available in a free, searchable database that includes current and past years.

What Others Are Saying About PART

OMB Watch is not alone in criticizing the White House's Program Assessment Rating Tool. See what others have had to say recently about this flawed measure.

PART Punishes Programs for Following the Law

Clay Johnson, OMB deputy director, when asked in a congressional hearing, "[I]s it possible for a program to get a poor rating simply because it does what's required by statute and not necessarily what OMB might like for that program to do?":

Yes.

--*Accountability and Results in Federal Budgeting: Hearing Before the Subcomm. on Federal Financial Management, Government Information & Int'l Security of the Senate Comm. on Homeland Security & Gov't Affairs*, 109th Cong. (2005), 2005 WL 1409975 (F.D.C.H.) (colloquy between Sen. Carper and Clay Johnson III).

PART Is Divorced from Reality

From ThinkProgress:

1) "Federal Emergency Management Agency: Disaster Recovery":	The Department of Homeland Security's Recovery program ensures that individuals and communities affected by disastes [SIC] of all sizes, including catastrophic and terrorist events, are able to return to normal function with minimal suffering and disruption of services. PERFORMING: Adequate (one star)	Reality--Reuters: With no clear recovery plan in sight five months after Hurricane Katrina, many victims are simply hanging on, waiting anxiously for signs that their neighborhoods are either reviving or turning into permanent ghost towns.
2) "Preparedness--Grants and Training Office National Exercise Program":	Prepare Federal, state, and local responders to prevent, respond to, and recover from acts of terrorism by providing the tools to plan, conduct, and evaluate exercises. PERFORMING: Effective (three stars)	Reality--GAO: Although the [National Response Plan] framework envisions a proactive national response in the event of a catastrophe, the nation does not yet have the types of detailed plans needed to better delineate capabilities that might be required and how such assistance will be provided and coordinated.
3) "Federal Emergency Management Agency: Disaster Response":	The Department of Homeland Security's Response program is designed to quickly, efficiently and effectively provide support to State, Tribal, and local governments, and Federal response teams in the event of a natural or manmade disaster, emergency or terrorist event. PERFORMING: Adequate (one star)	Reality--*Washington Post*: Four years after the Sept. 11, 2001, attacks, administration officials did not establish a clear chain of command for the domestic emergency; disregarded early warnings of a Category 5 hurricane inundating New Orleans and southeast Louisiana; and did not ensure that cities and states had adequate plans and training before the Aug. 29 storm, according to the Government Accountability Office.

PART Continues the Bush War on Science

Statement of Dr. Genevieve Matanoski, EPA Science Advisory Board, to Subcommittee on Environment, Technology, and Standards, House Committee on Science, March 11, 2004, *available on Westlaw at* 2004 WL 506081 (by subscription-only):

[A]fter evaluating PART summaries for several research programs, our conclusion is that PART may, at this time, have a limited capacity to inform budget decisions on research programs. The Board is concerned with the manner in which the weighting formula in PART seems to influence the full analysis and thus **favor programs with short-run results over those having long term results**. There is also concern that **an evaluator's subjective considerations might be able to bias those weights and the rating itself**.

Specifically, it appears that the weighting formula in the PART **favors programs with near-term benefits at the expense of programs with long-term benefits**. Since research inevitably involves more long-term benefits and fewer short-term benefits, PART ratings serve to bias the decision-making process against programs such as STAR ecosystem research, global climate change research,

likely program success. However, the weights that the PART assigns to different program characteristics do not seem to have been validated systematically against the contribution of each program characteristic to any independent objective measure of program success. If the weights in the tool are arbitrarily assigned, the PART may have characteristics that could lead to biases in evaluation that are related to the subjective judgments of its designers. We believe that the tool should be reviewed to determine its adequacy for its use in supporting budget decisions.

As the Board observed significant decreases in science and research funding, it also noted a substantial resource increase in the State and Tribal Assistance Grant account (STAG) for an initiative for retrofitting school busses. The Board does not challenge the worthiness of this program, rather it notes that it has no information on the science supporting this initiative. The Board trusts that the benefits of this program have been rigorously reviewed.

The real issue here is **how research programs (and others) are to be evaluated** and **whether a different metric is necessary for basic vs. applied research programs**. Also, of interest is whether research results should be evaluated separately from the outcomes of programs they are intended to support? Although the Board did not directly evaluate the PART itself, it is of obvious difficulty to conceive of a simple quantitative metric that could be applied across the broad areas of ecosystem quality, human health effects, endocrine effects, and technology development. The question is even more complex when you consider that some research is intended to develop limited data in the short-run to fill a specific knowledge gap and other research is intended to provide an understanding of whole systems in the long-term. Research program measurement is even more difficult because the knowledge and methods developed by EPA, especially ORD's researchers, are not usually directly applied by ORD, rather they are often used by others to support decisions on a broad suite of diverse statutory mandates. Thus, we believe that evaluations of the performance of research programs will need to consider the specific factors of each program that the research is intended to support. Further, **it is unlikely that simple formulas will be able to handle this task well**. It is more likely that realistic research program performance assessment will need to be a combination of quantitative metrics and other information and analyses which is then evaluated by groups of experts with relevant knowledge.

I note that the NAS, in its review of STAR, also had concerns with quantitative routines used in performance assessments and noted that "The Committee judges that expert review by a group of people with appropriate expertise is the best method of evaluating broad research programs, such as the STAR program."

White House Pushes for Sunsets, Reorganization Power

The White House used its annual budget submission yet again as a platform to call for policies that would distort the management of government programs.

Both the budget submission that was released Feb. 6 and the follow-up document detailing programs slated for elimination or deep cuts reiterated the White House's call for sunset and reorganization authority legislation.

Bills have been introduced in past Congresses to further these goals, but they typically failed to advance. That the White House is not only endorsing but also actively proposing sunset and reorganization proposals is a new factor, as is the sheer number of bills that have been introduced to push the concepts.

Click here for more information on the sunset commission proposals, and here for more information on the reorganization authority proposals. Click here for recent OMB Watch testimony on two bills in the House that embody the White House proposals.

Patriot Act Deal Compromises Civil Liberties

After two short-term extensions of the USA PATRIOT Act, Congress and the White House appear to have reached a deal on the controversial legislation. Unfortunately, the deal fails to make real progress toward protecting civil liberties.

The White House has been pushing for full reauthorization of the Patriot Act for several years, even calling for making permenant several law enforcement powers that were created by scheduled to sunset under the act. Sens. John Sununu (R-NH) and Russell Feingold (D-WI), led a group of Senators in demanding specific changes to the USA PATRIOT Act to better protect civil liberties. But Sununu recently struck a deal with the White House that fails to make changes to most of the identified problems.

The deal would:

- permit judicial review of Section 215 orders (which allow inspection of records or other items held by libraries and booksellers) after *one year* of its receipt.
- allow National Security Letter (NSL) recipients not to inform the FBI of their attorney's name.
- clarify that libraries are not subject to NSLs.

Feingold argues that such changes are insufficient and has committed to doing everything he can to stop it.

The following provisions are previously identified problems that Sununu's deal fails to address:

- The Library Records Provision (Sec. 215) -- This provision allows the government to obtain a secret court order for any records or items from libraries and booksellers. The agreement does not require the government to show a connection between the records being sought and a suspected terrorist, nor does the target of the investigation need be suspected of having any link to terrorism. The bi-partisan group of Senators previously argued that the government should show a connection when seeking court orders to prevent "fishing expeditions" that unduly invade privacy.
- Sneak and Peak Provision (Section 213) -- This provision allows delayed notice of searches of homes and businesses. The agreement would allow a 30-day delay in providing notice of a search. Also troubling is that such "sneak and peak" searches are not limited to persons or businesses with links to terrorism. The deal fails to reinstate the maximum of seven days before notification that existed before the USA PATRIOT Act and which the bi-partisan group argued for.
- National Security Letters (Section 505) -- This provision expands the power of the FBI to issue NSLs to obtain records from businesses about their customers. This includes credit reports, records from Internet Service Providers, and financial records. The agreement does not require court approval or a connection between the requested records and a suspected terrorist.

A vote on amendments to the USA PATRIOT Act and a final vote on the bill are expected in the

coming weeks. Failing a dramatic turnaround, the Senate is expected to pass the agreement with little modification, leaving another missed opportunity for Congress to ensure better protection of civil liberties under the USA PATRIOT Act.

Bush Budget Cuts Target EPA Libraries

President Bush's proposed budget for 2007 includes deep cuts to the Environmental Protection Agency (EPA) Library Network, which EPA staff and the public rely on for research, policy making and advocacy efforts. According to internal EPA documents, the proposed cuts would force the EPA to close its headquarters library, discontinue its Online Library System electronic catalogue, and shut the doors of many of the libraries operating in EPA's 10 regions.

The president's budget proposal, which was released earlier this month, slashes the EPA Library Network's budget by a whopping 80 percent from 2006 funding levels, dropping the library budget from $2.5 million to $500,000. These funding cuts are part of a larger package of EPA budget cuts that would slash $300 million, or 5 percent, from the agency's 2006 funding levels.

EPA's Headquarter and Regional libraries handle more than 134,000 research requests from EPA scientific and enforcement staff each year, according to a report by an EPA Workgroup that analyzes how the agency might cope with the proposed library budget cuts. These services, according to the report, "are extremely important, perhaps essential, in helping EPA staff perform the Agency's mission."

According to EPA library staff, the cuts would eliminate the irreplaceable service of the Online Library System (OLS) electronic catalogue, which is operated out of EPA's headquarters library. The OLS serves as the EPA library network's card catalogue, without which EPA's libraries would not be able to locate any of their individual holdings. EPA staff and the public would thus be left without useful access to the agency's vast storehouse of information, as well as 50,000 documents not available anywhere else.

Cuts to EPA's regional libraries could affect citizen access to Offsite Consequence Analysis (OCA) Reading Rooms. OCA Reading Rooms provide the only public access to information on what could go wrong in "worst-case" chemical accidents at thousands of facilities around the country that store large quantities of ultra-hazardous chemicals. Public access to this information has helped spur improvements in industrial process and reduce risks faced by fence-line communities.

The president's proposed budget will be eventually parsed out into several appropriation bills, which will be debated by the appropriate congressional committees. The Interior Subcommittees of the Appropriations Committees, in the House and Senate, have jurisdiction over EPA's budget items. The subcommittees will likely debate EPA's budget items sometime in May or June. It is at this point that legislators can make changes and amendments to the budget proposals. OMB Watch budget policy analyst Adam Hughes predicts that Congress will make many changes to the president's budget, calling it "overall, unrealistic." However, if the president's proposed EPA cuts make it through the budget process unchanged, EPA staff and the public will likely have much less access to EPA's library materials and the public health and safety information they contain.

One in Five Women Carries Too Much Mercury

On Feb. 8, the Environmental Quality Institute (EQI) at the University of North Carolina-Asheville released the largest ever biomonitoring study of mercury levels in the U.S. population. Based on hair samples from more than 6,600 women, researchers found that 20 percent of women of childbearing

age exceed the EPA's recommended mercury limit.

In support of the study, Sierra Club and Greenpeace sponsored mercury-testing events. Individuals were also able to order testing kits online. "We found the greatest single factor influencing mercury exposure was the frequency of fish consumption," says Dr. Steve Patch, EQI's co-director. Coal-fired power plants produce 42 percent of industrial mercury pollution in the U.S., and airborne mercury emissions from these plants often settle into lakes, streams, and oceans, contaminating fish and shellfish. Polluted fish along with the mercury they contain then winds up on dinner tables. Mercury is a persistent bioaccumulative toxin, which means it collects as it moves up the food chain and concentrates at the top, slots occupied by people and a few other "high-order" consumers.

The Centers for Disease Control and Prevention (CDC) conducted a similar study in 1999 as part of its National Health and Nutrition Examination Survey. The project tested hair mercury levels in 838 children one to five years of age, and 1,726 women between 16 and 49 years old. The study found mercury exposure similar to those of the EQI study. In addition, CDC estimated from its study that between 300,000 and 630,000 newborns each year may be exposed before birth to mercury concentrations above the EPA limit, above which the risk increases that neurological development will be adversely affected.

Biomonitoring studies, such as the CDC and EQI study, can help improve public health policy by indicating trends in chemical exposures, identifying communities that are disproportionately affected or particularly vulnerable, assessing the effectiveness of current regulations, and setting priorities for legislative and regulatory action. The biomonitoring studies point to a need for improved policies, environmental and health advocates argue, because after years of progress in pollution prevention and reduction of toxic releases, these studies' results still show dangerously high levels of toxic substances in peoples' bodies.

Unfortunately, thus far biomonitoring's usefulness as a public health tool has been constrained by the limited number and scope of studies performed. For instance, while July 2005 marked the release of CDC's Third National Report on Human Exposure to Environmental Chemicals, a nation-wide biomonitoring study released every two years, many critics continue to describe the study as too small and limited for use on a national scale. The study only examines exposure levels in 2,500 people across the country. Many scientists have called for more extensive national research and more focused biomonitoring studies, such as state-specific programs, that would help make the connection between sources of toxics, at-risk populations, and pollution-prevention measures. Sadly, efforts thus far to establish state biomonitoring programs have been blocked. Last year, the California legislature passed what would have been the country's first state-wide biomonitoring program; however, the bill (SB 600) was vetoed by Governor Arnold Schwarzenegger.

Sensitive But Unclassified Info: You Can't Have It. Why? Because They Say So.

The explosion in the use by federal agencies of Sensitive But Unclassified (SBU) designations to withhold information since the 9/11 terrorist attacks has resulted in uneven policies across agencies and unnecessary restrictions on public access to information, according to a recent American Bar Association report. Such problems have manifested themselves in Connecticut, where state officials are trying to access, and make public, safety information pertaining to a liquefied natural gas (LNG) plant, in order to determine and reduce any risk to the public posed by the plant.

The American Bar Association (ABA) report noted several problems with the implementation of

SBU. First, SBU categories have been too vaguely defined by the administration and are too unevenly implemented across government agencies. Second, government agencies often incorrectly cite SBU as being automatically exempt from requests under laws governing public disclosure, particularly the Freedom of Information Act (FOIA).

In March 2002, White House Chief of Staff Andrew Card issued a memorandum to federal agencies urging them to withhold sensitive information from public disclosure, but it failed to adequately define the procedures for categorizing information as SBU. A 2003 Congressional Research Services report on SBU states, "There is no uniformity in Federal agency definitions, or rules to implement safeguards for 'sensitive but unclassified' information." Indeed, as noted in Openthegovernment.org's 2005 Secrecy Report Card, there are currently at least 50 different versions of SBU categories being used by various federal agencies.

The ABA found that this lack of uniformity "contributes to confusion regarding whether information should be withheld under FOIA," and that many government agencies have taken the position that SBU information is automatically exempt from FOIA, leading to "excessive withholding of information that should be disclosed under FOIA." Though not incorrectly advising agencies that SBU information is automatically exempt from FOIA, the Bush administration has urged agencies to attempt to use FOIA exemptions for SBU information. The ABA recommends that the administration clarify this position to prevent agencies from continuing to mistakenly restrict access to important information.

This assumption of nondisclosure for SBU currently being played out in Connecticut. Soon after the Card memo, the Federal Energy Regulatory Commission (FERC) categorized a great deal of information as Critical Energy Infrastructure Information (CEII), a category of SBU information. FERC removed all information categorized as CEII from the agency's website, and the agency has flatly stated that all CEII is exempt from FOIA. A separate procedure for the commission to consider limited release of CEII information on a "need to know" basis was established. However, the new procedure does not allow information to become public, requiring agreements of non-disclosure from users before allowing access.

The FERC policy sparked controversy when Connecticut's State Attorney General recently attempted to access information regarding a proposed LNG plant. The State of Connecticut wishes to review the design and safety plans of the Broadwater LNG plant in order to determine whether it should be built and whether it would endanger the health and safety of the residents of Connecticut. FERC has denied the state's request claiming that such information is not publicly releasable because it is sensitive but unclassified.

Connecticut Attorney General Richard Blumenthal states that his office "will aggressively fight this at every forum possible - piercing Broadwater's shroud of secrecy that so clearly demonstrates the danger of this project. The FERC secrecy order belies its contention that there are no terrorist or security concerns - and we will explore ways to force greater disclosure."

FERC contends that it has, unlike other agencies, provided additional mechanisms to access such information. The agency, however, appears to be overlooking the fact that no automatic exemption from FOIA exists for CEII. Open government advocates contend that information on the potential health and safety risks from a new facility should obviously be provided to surrounding communities and that, in this case in particular, the government has no right to withhold it.

Dep't of Homeland Security Plans Broad Info Grab

According to reports, the Department of Homeland Security (DHS) is developing a program to collect and search a wide array of personal, public and classified information, similar to a program killed by Congress in 2002. The Analysis, Dissemination, Visualization, Insight, and Semantic Enhancement (ADVISE) program would implement a massive data mining program to prevent terrorist attacks; the program, however, continues to lack the necessary oversight structure and procedures to protect privacy and safeguard civil liberties.

The *Christian Science Monitor* recently reported that DHS is actively developing the ADVISE program, despite Congress having little knowledge of it. DHS is allocating $50 million in funding this year to develop the data mining tool that will store massive amounts of information, including buying habits, travel records, criminal records, intelligence reports, and information gleaned from public news sources such as blogs and traditional sources like CNN. According to a DHS report, the technology will draw connections between persons, determining who is related to whom, who works with whom, who lives close to whom, and who is associated with what organization/s. It will also flag suspicious behavior patterns and form the foundational structure for other more specifically targeted programs, like the Biodefense Knowledge Center, whose goal it is to "integrate disparate components in order to anticipate, prepare for, prevent, detect, respond to, and attribute biological threats."

This is not the first time the federal government has sought to establish a comprehensive data mining program. The Total Information Awareness (TIA) program, developed by the Defense Advanced Research Projects Agency (DARPA) in 2002, bares a close resemblance to DHS's ADVISE program. The program was quickly shut down by Congress amid wide-spread privacy concerns, despite DARPA's attempt to assuage such concerns by renaming the program *Terrorism* Information Awareness. TIA would have been able to store and retrieve personal information, including data pertaining to people's health records, travel plans, buying habits, educational records, with few restrictions to protect privacy and ensure citizen's Fourth Amendment rights related to searches and seizures. The plan was viewed by many as a Big Brother-like attempt to store *all* existing data and monitor the public for suspicious behavior.

The U.S. intelligence agencies have developed over the last 50 years in the context of the Cold War, when the United States faced a finite number of threats from an identifiable number of sources and locations. The terrorist attacks of Sept. 11 forced a dramatic shift in intelligence collection methodology and priorities. No longer does the country face a finite number of threats, and no longer are the locations and sources of threats clearly identifiable. Hence, greater emphasis is now placed on increasing the amount of potentially pertinent information collected and on drawing connections between disparate, seemingly innocuous bits of data.

As the Government Accountability Office reported in 2004, there is a plethora of intelligence-collection programs, both wide in scope and outside the bounds of traditional intelligence programs. Most recently, we learned of the National Security Agency's (NSA) warrantless domestic spying program authorized by President Bush that monitors international telephone and Internet communications of American citizens with individuals in certain Middle Eastern countries, operating without judicial oversight.

DHS acknowledges that the program needs to contain safeguards for personal privacy and civil liberties and plans to institute protective procedures like creating "multiple levels of trust," which only allow certain people who have access to ADVISE to access personal information and "reversible anonymization," which "allows human beings to look at information about a person and

only learn the identity of the person if the information fits a profile of suspicious behavior."

Privacy advocates, however, find the privacy safeguards discussed by DHS to be insufficient. The most important safeguard to protecting privacy and civil liberties, they argue, is oversight, something sorely lacking from the program in which the Defense Department would have had complete, unchecked authority to access and monitor Americans' private information. In its 2004 report, GAO recommended an oversight board as the best way to ensure the protection of privacy. Moreover, Congress should be updated on DHS's activities and efforts to protect against terrorist attacks while maintaining civil liberties. As the *Christian Science Monitor* reported, many members of Congress with direct oversight of DHS were not even aware of the program's existence, let alone the civil liberties and privacy issues it raises.

A separate criticism concerns the program's effectiveness. Many believe it would be a waste of taxpayer dollars to develop such enormously expensive technologies that offer little in return. Past examples of such inefficiency include an NSA program called Trailblazer that cost $1 billion dollars to develop but was a complete failure. Trailblazer was intended to be a revolutionary data mining program that would have easily searched and highlighted suspicious patterns among the enormous collection of NSA intelligence, but, as reported by MSNBC, it is, according to Robert D. Steele of the CIA, a "complete and abject failure." An additional problem with data mining technology is the risk of false-positive results associated with so much data collection. Such false leads could drain agency resources with unnecessary follow up and violate the privacy rights of falsely identified individuals. DHS reports that some of technologies used in the ADVISE program have just a 60 to 80 percent accuracy rate. Many data sources, particularly Internet sources, contain inaccurate information, adding to concerns over the technology's potential effectiveness.

Finally, privacy advocates pointed out that the potential for abuse is an ever-present concern with all data mining programs. Fearing a reemergence of the monitoring of innocent Americans that occurred in the1950s and 60s, civil liberties advocates are calling on Congress to put in place strict procedures for the use of information such as that to be collected under the ADVISE program, along with clear procedures for judicial and congressional oversight.

Report: U.S. Anti-Terrorism Policies Hurt Muslim Charities

A new report from OMB Watch details the organization's concerns about the impact of the war on terror on Muslim charities, and updates readers on the status of U.S.-based Muslim charities that have been shut down by the Treasury Department. Muslim Charities and the War on Terror: Top Ten Concerns and Status Update notes that, "Since the 9/11 terrorist attacks, U.S.-based charities have become targets in the government's war on terror financing...the lion's share of the burden of increased scrutiny, suspicion, and pre-emptive action has fallen on Muslim groups. This imbalanced campaign raises significant legal and ethical questions."

To follow are OMB Watch's top 10 concerns with U.S. anti-terrorism policies and their affect on Muslim charities:

1. Drastic sanctions in anti-terrorist financing laws are being used to shut down entire organizations, resulting in loss of badly needed humanitarian assistance around the world and creating a climate of fear in the nonprofit sector.
2. Despite sweeping post-9/11 investigative powers, authorities have failed to produce significant evidence of terror financing by U.S.-based charities.
3. Questionable evidence has been used to shut down the largest U.S.-based Muslim charities.

4. Anti-terrorist financing policies deny charities fundamental due process.
5. There are no safe harbor procedures to protect charities acting in good faith or to eliminate the risk of giving to Muslim charities or charitable programs working with Muslim populations.
6. Government action has created the perception of ethnic profiling and negatively impacted Muslim giving.
7. Organizations and individuals suspected of supporting terrorism are guilty until proven innocent.
8. Charitable funds have been withheld from people in need of assistance and diverted to help pay judgments in unrelated lawsuits, violating the intentions of innocent Muslim donors.
9. There is unequal enforcement of anti-terrorist financing laws.
10. Treatment of Muslim charities hurts, not helps, the war on terrorism.

Lobby Reform: Momentum in Senate; House, Nonprofits Weigh Impact

After making a lot of noise about reform, lawmakers finally move to wade through the mountain of lobby and ethics reform bills and begin marking up legislation.

In the Senate, two committees are scheduled to mark up lobby reform bills the week of Feb. 27. Senate Rules and Administration Chairman Trent Lott (R-MS) has said his panel would likely mark up a lobbying reform bill on Feb. 28. Lott said the goal is to have the full Senate begin debate on the bill, which is still being written, the week of March 6.

Lott's markup will be followed on March 2 by a markup in the Senate Homeland Security and Governmental Affairs Committee. The Committee is currently crafting a bill based on an earlier bill sponsored by Sen. John McCain (R-AZ). The McCain bill (S. 2128) increases lobbyist reporting and disclosure requirements under the Lobbying Disclosure Act (LDA). For more information on the McCain bill, see Abramoff Plea Brings New Lobby Reform Bills (*OMB Watcher*, Jan. 10, 2005).

The Senate Finance Committee is also putting a finger in the pie. The Senate Indian Affairs Subcommittee agreed on Feb. 10 to send nearly 100 pages of documents regarding lobbyist Jack Abramoff's use of nonprofit groups to the Finance Committee. A joint statement issued by Committee Chair Charles Grassley (R-IA) and Ranking Member Max Baucus (D-MT) said the documents are part of an ongoing probe into whether "tax-exempt groups are misused for financial and political gain."

In the House, Speaker Dennis Hastert (R-IL) has asked for new restrictions that would increase lobbyist's reporting and disclosure requirements, impose tighter limits on gifts, and ban privately sponsored travel. He would like votes on the House floor by the end of March. This has led to conflict with newly elected Majority Leader John Boehner (R-OH), who has backed more disclosure for lobbyists, but has publicly opposed restrictive gift and travel proposals, calling any ban on private travel "childish." Boehner's statements are largely seen as representative of the views of rank-and-file members who do not want to give up their travel and gifts. Because of differences among House Republicans, the chamber may not bring up lobbying reform by Hastert's deadline, instead possibly opting to follow the Senate's lead on legislation.

Lawmakers on both sides of the aisle are facing conflicting pressures, particularly from outside

groups. Reform advocates are pushing changes beyond current proposals, such as bans on lobbyist-hosted fundraisers and a severe cap on lobbyist campaign donations. Conversely, many groups are quietly (and some not so quietly) fighting grassroots lobbying disclosure and bans on travel. Some nonprofits are concerned that a requirement to disclose their grassroots lobbying amounts would be burdensome. Charities currently disclose grassroots lobbying - state and federal - on IRS Form 990, and legislation that mimics the IRS definitions as closely as possible should ease the burden of additional reporting.

Some in the nonprofit sector are also seeking language that would allow nonprofit groups to continue paying for educational travel. A number of groups sent a letter this week to Hastert, authored by the Institute on Religion and Public Policy, opposing the travel ban. "If NGOs are barred from funding educational travel by members and staff, such travel will only be feasible with taxpayer funds or at personal expense," said the letter. "If members must travel only at their own expense, the toll of the traveling cost will inevitably lead to minimal travel."

Nonprofits are also watching closely a provision in Rep. Mike Fitzpatrick's (R-PA) H.R. 4667, the Lobbying Transparency and Accountability Act. While largely similar to legislation introduced by McCain, the bill contains a provision that could have serious repercussions for nonprofits. The provision, similar to legislation introduced in 1995 by Rep. Earnest Istook (R-OK) and former Reps. David McIntosh (R-IN) and Robert Ehrlich (R-MD), limits the amount of privately raised funds that can be used by federal grantees for advocacy purposes; creates expansive definition of advocacy; and constructs new, burdensome regulatory and paperwork requirements for charities. Experts are currently examining the language, although it is unlikely that the Fitzpatrick bill will move through committee.

OMB Watch Files Petition for Electioneering Communication Rulemaking

On Feb. 16, OMB Watch joined numerous other groups, including the AFL-CIO, Alliance for Justice, and U.S. Chamber of Commerce, in filing a Petition for Rulemaking with the Federal Election Commission (FEC), asking the FEC to exempt legitimate grassroots communications from "electioneering communication" prohibitions.

The petition is in response to the Supreme Court's ruling in *Wisconsin Right to Life, Inc. v. FEC*. The Court upheld the right of advocacy groups to seek protection for legitimate issue advertising and noted that the FEC had the statutory authority to craft a rule to protect certain ads. In the Court's decision, they upheld the right of advocacy groups to seek protection for legitimate issue advertising.

Jan Baran, attorney for the U.S. Chamber of Commerce noted, "Everybody who read the action of the Supreme Court was struck by their reference to the [Federal Election] Commission's power to make exceptions under the law. We saw that as a signal to the FEC and the regulated community to see whether or not an exception can be made through rulemaking instead of repeated litigation."

Currently, the electioneering communications provision, under the Bipartisan Campaign Reform Act of 2002 (BCRA), bars any ad that mentions a federal candidate broadcast within 30 days of a primary election or within 60 days of a general election. The FEC had initially exempted organizations under Section 501(c)(3) of the tax code from the "electioneering communications rule" due to their nonpartisan nature. (Ads sponsored by such groups cannot support or oppose a candidate for elected office. Thus, such ads would have to be issue ads, supporting or opposing

policy options.)

The FEC withdrew the exemption in December 2005 after a federal court found its justification for the exemption inadequate. The FEC rule bars general references to federal candidates, so that a grassroots broadcast message during the banned period asking people to "call your Senator" to support or oppose legislation violates the rule, according to the court.

Under federal campaign finance laws, if the petition succeeds, the FEC will issue a Notice of Availability, inviting comment on the merits of this proposed rulemaking. The coalition asked the FEC to issue a rulemaking on an expedited basis in light of the November elections.

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The Watcher
March 7, 2006 Vol. 7, No. 5

Letter from Gary Bass: OMB Watch Board Changes

Dear OMB Watcher:

We don't normally write *Watcher* pieces about OMB Watch's internal activities. We thought it only fitting, however, to share with you a significant change in our board of directors. After 18 remarkable years as chair of OMB Watch's board, Mark Rosenman recently stepped down as chair (although, to our relief, will remain on the board).

Fellow board member Paul Marchand, a leader in the disability community and director of The Arc and United Cerebral Palsy Disability Policy Collaboration, has taken over where Mark left off, assuming the role of board chair last month. The transition has been a smooth one, so OMB Watch has not missed a beat in our work toward greater government accountability and citizen

participation.

It has been an honor and a privilege to work with Mark as he chaired the board these years. Mark, a faculty member of The Union Institute and University, started on the board in the mid-1980s and became co-chair in 1987. Not long after an anonymous OMB political appointee was quoted in *The Washington Post*, calling OMB Watch "three guys and a goddamned mimeograph machine."

From those humble beginnings, Mark oversaw the growth of OMB Watch as it became an important player in progressive policy circles, as well as a reliable resource to state and local nonprofit organizations across the country. Today, we're "twenty people and the goddamned Internet!" And the organization continues to get major bang for its buck.

Under Mark's steady hand, OMB Watch saw many accomplishments. Some highlights on the policy front included successfully stopping many of the provisions in the Contract with America, a raft of constitutional balanced budget amendments, and several attacks on nonprofit advocacy and free speech. At the same time, OMB Watch played a leadership role on strengthening the public's right to know. In 1989, we created RTK NET, providing online access to toxics and health data.

It was after the 9/11 terrorist attacks that Mark's leadership and commitment to the public's right to know was truly tested. He lead the board through a process that concluded with a decision to continue providing access to executive summaries of EPA's Risk Management Plans, even when EPA decided to remove the data from its web site. This action resulted in communities across the country continuing to have available to them information about chemical dangers, and in several parts of the country changes to reduce community hazards.

Mark's leadership style is a model for other nonprofit board chairs. He involved board members in decisions, and took those extra few moments to reach out to board members between meetings to get their thoughts. His communication style, at once friendly and direct, helped to create a healthy organizational climate, in which board members help set organizational goals and trust in staff work plans to achieve those goals. By example, he demonstrated how a board should provide organizational leadership and fiduciary responsibility.

Paul, for his part, has worked in Washington for nearly 30 years and has had a hand in virtually every piece of federal legislation affecting persons with disabilities. From education rights to civil rights, from heath care to housing, Paul has been a leader. He was also a central figure behind the creation of the Consortium of Citizens with Disabilities, the nation's leading coalition of organizations advocating for the rights of persons with disabilities. We believe his experience with coalition building and organizing around issues will prove invaluable to OMB Watch.

The entire OMB Watch staff will miss Mark's guidance, insight, and humor as chair of the board. Yet we are comforted by Paul's expertise and experience in leading national policy efforts, and we look forward to continuing and expanding our work under his leadership.

If you ever have comments for Paul or me, or wish to share your thoughts on Mark's past leadership, feel free to send us a message at ombwatch@ombwatch.org.

Sincerely,

Gary D. Bass
Executive Director
OMB Watch

Agencies Mislead the Public on Katrina

State and federal government officials are misleading the public about potential health hazards from toxic contamination in New Orleans, according to a Feb. 23 report by the Natural Resources Defense Council (NRDC). Hurricane Katrina's winds and floodwaters released heavy metals and other industrial byproducts throughout the area, according to the report. These hazardous materials then deposited in homes, yards, and schools across the region, in what is now a cracked layer of toxic muck. The Environmental Protection Agency (EPA) and Louisiana Department of Environmental Quality (LDEQ), however, state that contamination levels in the city pose no "unacceptable" health risks -- a statement disputed by the NRDC report using EPA's own data.

EPA took hundreds of soil samples in the New Orleans region from Sept. 10, 2005 to Jan. 15, 2006. While EPA has posted its testing data online, the agency has provided no comprehensive analysis of that data. The hundreds of data points are too complex to be useful to the average concerned citizen trying to determine if it is safe to return to his or her home, or what precautions should take before returning home. Without analysis of the data, residents are left with little other than EPA's and LDEQ's vague press statements about environmental conditions in the area.

The NRDC, for the first time, analyzed the hundreds of EPA soil samples, connecting the data to create the missing overview for the area. The NRDC analysis found high levels of arsenic, lead and dangerous petroleum compounds across the city at levels that represent serious health threats.

NRDC and local advocacy groups, however, point out that state and federal agencies are downplaying the potential health threats despite the data, and are failing to provide adequate guidance to protect the public. Nor have officials initiated an adequate plan to clean up residents' homes.

"It is stunning that the state's environmental agency can look at these results and say there's no problem," said Dr. Gina Solomon, the NRDC senior scientist who oversaw the analysis. "More than a third of the EPA samples in New Orleans had arsenic levels that exceed the Louisiana threshold level requiring an investigation or cleanup. Federal and state agencies have to clean up this toxic mess to ensure returning residents are safe."

The report identified eight hot spots where levels of diesel fuel ingredients, which can cause kidney damage, increased blood pressure, and decreased ability to form blood clots, are more than 100 times higher than the LDEQ's standard for residential neighborhoods. These hot spots are located

in Bywater, Lakeview, Central City/Garden District, and Mid-City, as well as in Chalmette and St. Bernard Parish.

In the absence of meaningful state and federal warnings against possible chemical exposures, community members in St. Bernard Parish are taking matters into their own hands. The Louisiana Bucket Brigade, and the St. Bernard Citizens for Environmental Quality held a March 4 training to distribute and instruct on the use of sampling kits for residents to take soil samples on their property. The samples collected by residents will be shipped to a laboratory to be tested for heavy metals and diesel fuel ingredients -- called diesel-range organics.

Environmental groups are pressing EPA to remove toxic sediment and contaminated soil from yards, fully inform people of the precise scope and nature of the health threats, and provide detailed information about what precautions citizens should take to protect themselves and their families.

First Official Congressional Forum for TRI

A briefing for House congressional staff held on Feb. 23 to inform Congress about the dangers of the U.S. Environmental Protection Agency (EPA) proposals to reduce Toxics Release Inventory (TRI) chemical reporting was the first official forum of its kind. Staff from more than 30 offices heard from a diverse panel of experts on how the changes that EPA is proposing would undermine first responder readiness, harm worker safety, interfere with state programs and hinder cancer research. The briefing was sponsored by Reps. Stephen Lunch (D-MA), Frank Pallone (D-NJ), Luis Gutierrez (D-IL), and Hilda Solis (D-CA).

Presenters in the briefing were:

- **Michael R. Harbut**, a medical doctor and Chief at the Center for Occupational and Environmental Medicine at the Karmanos Cancer Institute in Detroit, Michigan;
- **Alan Finkelstein**, Assistant Fire Marshall Strongsville, Ohio and Chair of Emergency Response with the Cuyahoga County Emergency Planning Committee;
- **Andy Frank**, Assistant Attorney General of New York;
- **Bill Kojola**, an Industrial Hygienist with the Department of Occupational Safety and Health at the AFL-CIO; and
- **Sean Moulton**, Director of Federal Information Policy with OMB Watch, who chaired the panel and offered opening remarks.

Moulton described how, for nearly 20 years, the TRI has been an essential tool in alerting emergency responders, researchers, workers, public health officials, community residents, and federal and state officials to the presence of toxic chemicals. Moulton went on to detail EPA's three current plans to scale back TRI reporting as part of an effort to reduce companies' "paperwork burden." He noted, however, that the proposed changes would only save companies between $7 and $14 a week for each chemical that could be report less--a miniscule amount compared to industry profits that range in the millions and even billions annual.

Harbut's previously recorded statement detailed how any reduction in reporting on the chemicals tracked under TRI will make more difficult the work of cancer researchers, as well as a wide range of other medical research dealing with human health and chemical exposure. Harbut's statement on

TRI can be seen here formatted for dial up users and broadband users.

Finkelstein explained how he and other first responders use TRI information to preplan for emergencies. As a firefighter, he told attendees, he wants as much information about a facility as possible, so the necessary precautions can be taken when entering into a hazardous situation in the event of an emergency. Finkelstein went on to aver that any reduction in TRI data would likely place first-responders, as well as the public, at greater risk.

Frank reported that Attorneys General from 12 states, including New York, sent EPA official public comments challenging the legality of the agency's TRI proposals. Frank noted that many states rely on TRI information and would lose important data if EPA's changes went into effect. He also found serious deficiencies in EPA's research of the potential impacts of the changes. The agency did not produce any analysis of health risks, environmental justice impacts, or of the loss of all reporting on some chemicals. Frank noted that the changes would eliminate all numerical reporting for 26 chemicals and cut more than half of the data available on 30 additional chemicals. New York Attorney General Eliot Spitzer, in a recent press release, stated the proposed cutbacks appear to be "yet another poorly considered notion to appease a few polluting constituents at the expense of a valuable program."

Kajola spoke on workers that regularly use the TRI information to identify hazards and chemical exposures in the workplace. In many instances, once an unnecessary hazard is identified, according to Kajola, workers can collaborate with management to reduce toxic chemical inventories and/or exposures. He went on to say that changes spurred by access to TRI information usually end up saving companies money and creating safer workplaces. Kajola also noted that many of the identified risks are not releases, but pollution that is captured and either managed onsite or transferred for disposal elsewhere. While avoiding direct releases into the environment was important, Kajola explained, tracking onsite and transferred pollution was crucial as well, because such pollution posed a significant risk to workers and the public.

While no librarians were present for the briefing, many also weighed in officially recently. On Jan. 25, the American Library Association (ALA) issued a resolution opposing the EPA proposals. The ALA resolution sited the groups 130 year history of promoting "the ability of the public to access information important to their daily lives."

Whether Congress will weigh in on the TRI proposals remains uncertain. Now that EPA has closed the period for public comments on the proposed changes, however, Congress has become the main forum for this issue.

Reclassification Run Amok

Following sharp criticism from a number of historians and national security experts, the National Archives has issue a moratorium on a massive reclassification program that came to light recently. Since the late 1990s, government agencies have been removing declassified documents from the shelves of the National Archives and considering them for reclassification. Since many of the documents are publicly available--some have even been publicly published by the State Department and are for sale at Amazon.com-- historians and national security experts questioned justifications for reclassifying the documents.

The Reclassification Program

In a Feb. 21 National Security Archives report, Matthew M. Aid disclosed the scope of the reclassification program. The program's inception followed a 1995 executive order issued by President Clinton that required government agencies to declassify all historical records that were 25 years or older, with certain national security exceptions.

In 1998, fearing that many of the documents released were of a sensitive nature, agencies initiated a broad re-review of all national security documents on the open shelves of the National Archives. The program is expected to run until 2007 and, to date, over 55,000 pages of documents have been reclassified. Most of these documents are from the Central Intelligence Agency (CIA), Defense Department, Defense Intelligence Agency, Department of Justice (DOJ), and State Department, often including non-sensitive information and sometimes dating back to World War II. It was not until this year that the public, Congress or even some high-level members of the National Archives were made aware of the massive scope of the reclassification effort. Unlike other similar efforts, Congress did not authorized the intelligence agencies to undertake the program, nor has there been an executive order, or any appropriated money for this expensive effort, estimated to be in the seven digits.

The Problem

Aid's report details the number of documents reclassified and gives a sampling of some of the curious decisions to reclassify. Apparently, 7,711 State Department documents, totaling 29,479 pages, have been removed from the National Archives. The Office of the Secretary of Defense has had 478 documents (13,689 pages) removed, and the Air Force has had 282 documents (5,552 pages) removed. Many of the documents date back to World War II, where as other documents concern completely innocuous and sometimes embarrassing details.

In one reclassified document, the CIA criticizes the State Department for not notifying them about certain details regarding anti-American riots in Bogotá, Columbia. Given that the document dates from 1948, there does not appear to be any legitimate, current national security concerns discussed in the document. In another reclassified document from 1950, the CIA mistakenly argues that China will not enter the Korean War. Again, no sensitive national security details are revealed, though the document could be seen as portraying the CIA in a negative light, since China entered the war a mere two weeks later.

There seems to be a utter lack of policy or criteria for determining which documents qualify for reclassification in the extensive re-review. *Slate* reports that some junior reviewers were instructed to "simply reclassify anything bearing the words 'atomic' or 'restricted data,' regardless of what else the document might or might not contain." This overly broad and vague approach to reclassification is similar to the ongoing over-restriction of information in poorly defined categories for Sensitive But Unclassified (SBU) information.

Oversight and Review

On March 2, the National Archives announced a formal moratorium and review of the reclassification program. The investigation involves a review of National Archive classification procedures to prevent over-classification mistakes from occurring. The National Archives has requested that agencies release "the maximum amount of information consistent with the obligation

to protect truly sensitive national security information from unauthorized disclosure."

In addition to these National Archive actions, the House has stepped in to conduct oversight of the program. Rep. Christopher Shays (R-CT), chairman of the House Government Reform subcommittee, announced his intentions to hold hearings on the program on March 14.

NSA Spying Program on Trial

Concerns over the warrantless domestic spying program by the National Security Agency (NSA) have not gone away. Congressional hearings continue and expand as legal actions begin.

Sens. Arlen Specter (R-PA) and Patrick Leahy (D-VT), chairman and ranking member, respectively, of the Senate Judiciary Committee, conducted another round of hearings on the NSA program. In the first round of hearings on Feb. 6, Attorney General Alberto Gonzales defended the program as both necessary and legal. Gonzales argued that the NSA program is in conformity with the Foreign Intelligence Surveillance Act (FISA) and the Fourth Amendment.

The Feb. 28 hearings continued to focus on the legality of the program. Bruce Fein, former Associate Deputy Attorney General at the Department of Justice in the Reagan administration, railed against the program, stating in his testimony that we are at "a defining moment in the constitutional history of the United States." Fein maintained that the NSA program violates FISA and the Fourth Amendment and called the administration's argument for the legality of the program "preposterous." Fein also argued that Congress should use the power of the purse to "stipulate that the president can undertake no electronic surveillance for foreign intelligence purposes outside of FISA, unless within 30 days the president comes forward with a plan that this Congress agrees will be treated on a fast track basis like trade negotiations and let the burden be on the administration to explain to this committee why changes are necessary."

Arguments in support the NSA program were made at the hearings by, among others, law professor Doug Kmiec, who stated in his testimony that we should not be concerned with the legality or illegality of the program but rather with "what is the appropriate course as we go forward." Kmiec reasoned that the security of the country is at stake in the war on terrorism, and we should, therefore, focus on what is the appropriate program to confront that challenge and not whether such a program is in conformity with FISA and the Fourth Amendment, as "there is a genuine argument on both sides of that question." Former CIA director James Woolsey also defended the legality of the NSA program, arguing that "the inherent authority of the president under Article II, under these circumstances, permits the types of intercepts that are being undertaken."

Today, on March 7, the Senate Intelligence Committee is holding a closed-door hearing to review the NSA spying program. White House officials, in light of polls that show six in 10 Americans think that Congress should have oversight of the NSA program (e.g. American Civil Liberty Union's (ACLU) poll), have made more of an effort to brief Congress on the program. An attempt to require the White House to provide all documentation relating to the NSA spying program was voted down in the House Intelligence Committee. Reps. Pete Hoekstra (R-MI) and Jane Harmon (D-CA), chairman and ranking member, respectively, of the House Intelligence Committee, did agree, however, to expand committee oversight of the NSA program and conduct a review as to whether FISA needs to be modified.

Not waiting for Congress to decide whether the NSA program violates law or procedures, the Center for National Security Studies and the Constitution Project submitted an *amici curiae* brief to the FISA Court in case the court decides to take action. Having learned that the FISA Court received a confidential briefing from the administration on the legality of the NSA spying program, the two organizations submitted the brief to offer an opposing position. The brief argues that the NSA program "not only violates the clear mandates of the [FISA] statute and the Fourth Amendment, it constitutes the very 'exercise of arbitrary power' by the Executive that the Founders sought to prevent by adopting "the doctrine of separation of powers ... [at] the Convention of 1787.'"

In other court action, the *Washington Post* reported that the Al-Haramain Islamic Foundation, a Portland-based charity that had its assets frozen and is now defunct, filed suit against the Bush administration in federal court last week. The charity alleges that it was subject to the NSA spying program and that such surveillance of its communications violates, among other things, FISA and the Fourth Amendment. Citing classified documents, the lawsuit may offer the first concrete evidence of the NSA program's surveillance of domestic communications.

Other cases involving the NSA spying program played out in Michigan and Washington, DC. The ACLU filed a lawsuit in Michigan against the NSA, arguing that the spying program violates the "First and Fourth Amendments of the United States Constitution" and the separation of powers principle. In addition, on Feb. 16, a federal judge for the District Court of the District of Columbia ordered the Department of Justice to respond to requests by the Electronic Privacy Information Center under the Freedom of Information Act (FOIA). The groups is seeking records concerning a presidential order or directive authorizing the NSA to conduct domestic surveillance without the prior authorization of the FISA court. The court ordered the department to respond to these requests by March 8.

Little Progress on Chemical Security

The Government Accountability Office (GAO) concluded recently that, while some progress has been made on chemical security, hurdles and delays remain, including a lack of clear authority for the Department of Homeland Security (DHS) to establish requirements for chemical facilities. The GAO reported its findings in a report released Feb. 27 on the current status of chemical security at DHS. The GAO also found DHS resistant to involving the U.S. Environmental Protection Agency (EPA) in a review of inherently safer technologies that might reduce risks posed by chemical plants.

In response to requests from Sens. Susan Collins (R-ME), James Inhofe (R- OK) and Rep. Christopher Shays (R-CT), the GAO reviewed:

- DHS actions to develop a strategy to protect the chemical industry;
- DHS actions to assist in the industry's security efforts and coordinate with EPA, industry security initiatives and challenges; and
- DHS authority and whether additional legislation is needed to ensure chemical plant security.

Overall the report closely mirrors a 2003 investigation into chemical security also conducted by the GAO that drew many of the same conclusions.

On the progress side, DHS has been developing a Chemical Sector-Specific Plan that will (1)

categorize and prioritize the risks from various plants; (2) address security challenges; and (3) describe DHS's plan to improve security, including coordination with federal, state and local agencies and officials. The DHS review has identified approximately 3,400 high-priority facilities. Unfortunately, GAO found that the most recent version of the DHS document was drafted in July 2004 and DHS could provide no timeline for the plan's completion.

Apparently, because Congress has not passed chemical security legislation granting DHS authority over chemical facilities around security, the agency must rely on working with industry through voluntary programs. The GAO investigation concluded that existing laws provide DHS with only limited authority to address security concerns at U.S. chemical facilities and that new legislation from Congress would be necessary to grant the agency the authority necessary to require security improvements.

Specifically, the GAO recommends that:

- Congress grant DHS the authority to require chemical plant security,
- DHS complete the chemical sector-specific plan in a timely manner, and
- DHS work with EPA to study the security benefits of safer technologies.

While agreeing with the first two recommendations, DHS has expressed reservations about studying safer technologies, according to the GAO. Apparently, DHS does not believe that safer technologies would reduce risks from chemical facilities and would instead shift risks. DHS also expressed concerns over how interaction with EPA in such a study might be perceived by the chemical sector. GAO continues to see merit in such a study and retains the study as one of its main recommendations.

In Congress, Collins developed draft chemical security legislation with Sen. Joseph Lieberman (D-CT) toward the end of 2005. While making progress on key issues, the draft legislation fails to require the review of inherently safer technologies or involvement by EPA as recommended by GAO. The Homeland Security and Government Affairs Committee, of which Collins is Chair and Lieberman is ranking member, was expected to mark up the legislation early in this session of Congress. The scandals involving former House Majority Leader Tom Delay (R-TX), former Rep. Randy "Duke" Cunningham, and lobbyist Jack Abramoff, however, have shifted Congress' attention to lobbying reform. So chemical security has not yet been taken up by the committee this year. Apparently, Sens. Frank Lautenberg (D-NJ) and Barak Obama (D-IL) are using the delay to craft more aggressive chemical security legislation, as an alternative to the Collins-Lieberman bill.

Hearing Highlights Confusion Caused by "Legalese" in Regulation

Writing regulations in a way that is clear and easy to understand will save the government, taxpayers and regulated communities time and money, according to witnesses testifying on Mar. 1 before the House Government Reform Committee's Subcommittee on Regulatory Affairs.

Experts on the use of plain language and a representative from the National Association of Small Businesses all agreed that confusing language was a barrier to effective compliance and enforcement of regulations. There was also consensus that using plain, easily understood language could reduce the burden of regulations on both federal agencies and regulated communities.

Plain language, according to the witnesses, is language written in such a way that the intended reader can understand it the first time. This definition means that what constitutes plain language will vary depending on the intended audience.

In conjunction with the hearing, Subcommittee Chair Candice Miller (R-MI) and Ranking Member Stephen Lynch (D-MA) introduced new legislation (H.R. 4809) that will require regulations to be written using clear, straightforward language. While government initiatives have encouraged the use of plain language for some time, the new legislation will be the first to codify a definition of plain language.

Reducing Burden and Increasing Compliance by Writing Clearly

Testimony by Annetta L. Cheek, Vice-Chair of the Center for Plain Language, included many colorful examples of just how circuitous and ambiguous some of the language used in regulations is. For instance, a Department of Justice regulation states, "No payment shall be made to (or on behalf of) more than one individual on the basis of being the public safety officer's parent as his mother, or on that basis as his father." Cheek suggested one possible plain language revision might be, "We will pay only one person claiming to be the public safety officer's father and only one claiming to be the mother."

Joseph Kimble, a law professor and expert on plain language, peppered his testimony with examples of how using clear, concise language has saved government and private entities money. For instance, in a study of Army officers, "researchers found that readers of a plain-language memo were twice as likely to comply with it on the same day that they received it." In another example, the Department of Veteran's Affairs revised one letter in plain language and in one year, the number of calls to one regional office dropped from about 1,100 to about 200. If all forms and letters were easily understood by recipients, the cost savings could be enormous, Kimble said. The reduction in incorrectly filed forms alone could have a huge impact.

Cheek also pointed out that bad language propagates more bad language. She gave the example of safety instructions for airline passengers. Though the airlines are not required to use the exact same language as the Federal Aviation Administration in their public materials, most airlines copy the complicated language of the regulation precisely, for fear of interpreting it incorrectly if they attempt to rewrite it more clearly. Since many private and public entities rely on regulations for guidance, if the regulations are written in a confusing manner, many of the public materials based on those regulations will also be written incoherently.

Leveling the Playing Field

Using plain language can also help level the playing field. The need for experts to interpret confusing regulations can be a barrier to participation in the regulatory process. Small businesses, citizens groups and interested individuals will have an easier time commenting on ongoing rulemakings if they can easily understand the issues at hand, without having special knowledge or hiring expensive consultants, witnesses argued.

Todd McCracken, president of the National Small Business Association, explained that the regulatory process is skewed in favor of large businesses largely because the language used often requires experts to interpret. The bureaucratic language used means small businesses often have to hire outside experts to help them sort through confusing regulations and tax forms. Writing

regulations in easily understood language would make it easier for small businesses to comply with regulations and participate in decision-making.

Writing Clearly is Writing Intelligently

Both Kimble and Cheek stressed that using plain language does not mean "dumbing it down." Rather, plain language is just good writing, straightforward and concise. Kimble pointed out that it is much more difficult to write clearly than it is to write confounding, complicated sentences. Kimble has put these ideas to the test in helping the Department of Justice rewrite its civil procedures in plain language. Rewriting the procedures more clearly often uncovered ambiguities in the language, which are more difficult to mask when the writer is forced to be clear. The confusion inherent in complex subjects does not have to be compounded with convoluted writing, Kimble said.

Lobby Reform: Two Bills Move in Senate, Still No Bill from House

Just days after Rep. Randy "Duke" Cunningham (R-CA) was sent to jail on bribery charges, the Senate is debating new ethics and lobbying rules, while the House ponders its next move. The Senate will likely vote on legislation this week or next week.

On March 6, the Senate began debating S. 2349, the Legislative Transparency and Accountability Act that addresses reporting and disclosure requirements for lobbyists, and S. 2128, the Lobbying Transparency and Accountability Act. S. 2349, focusing on changes to existing Senate rules on earmarks, gifts and travel and which moved out of the Senate Rules Committee on March 1. The debate is expected to extend into next week, depending on the number of amendments, despite Majority Leader Bill Frist (R-TN) calling for work on the legislation to be finished by the end of the week.

On March 3, Frist said he plans to combine the two bills for vote on the Senate floor. If creating a cohesive reform bill proves too difficult, however, some provisions would be removed and taken up separately.

S. 2349, introduced by Sen. Trent Lott (R-MI), would make it easier to raise a point of order against earmarks, allowing senators the ability to easily strike provisions for special projects common in spending bills. Lott's legislation would also require the posting of conference reports on the Internet for at least 24 hours before the Senate could vote on them, and create new rules for disclosing member and staff travel and require disclosure on a member's website, when a lobbyist pays for any meals or drinks for a member of Congress or staff. For more on S. 2349, see [ADAM's Article]

S. 2128, a substitute bill, introduced by Sens. Susan Collins (R-ME) and Joe Lieberman (D-CT) during a March 2 markup by the Senate Homeland Security and Governmental Affairs Committee (HSGAC), was originally introduced by Sen. John McCain (R-AZ). The bill would require more frequent filing of lobbyist disclosure forms; require lobbyists to disclose their campaign contributions; and increase from one year to two years the time that lawmakers and senior staff are barred after leaving Congress before they can lobby their former colleagues. A number of provisions are expected to be spur contentious floor debate, including a requirement for nonprofits to disclose their grassroots expenditures; a provision regarding how new requirements will be enforced; and limits on the use of corporate jets.

In the March 2 markup of S. 2128, Lieberman and Sen. Carl Levin (D-MI) offered an amendment to change requirements under the Lobbying Disclosure Act (LDA) to include grassroots lobbying. The amendment passed, 10-6. Key elements of the grassroots lobbying provision:

- While grassroots lobbying expenditures would not be used to calculate if an organization is required to report, expenditures of $25,000 or more per quarter for grassroots lobbying would have to be disclosed for organizations already reporting under the LDA.
- The amendment excludes any grassroots lobbying communications to an organization's members. This is defined in accordance with the tax code definition -- i.e. anyone who contributes more than a nominal amount of time or money to the organization or is entitled to participate in the governance of the nonprofit. Reporting would also not include communications directed at less than 500 members of the general public. Voluntary or unpaid grassroots lobbying efforts would also need not be reported.
- 501(c)(3) organizations are allowed to use the tax code definitions of grassroots lobbying in place of the new definitions.

This provision, currently opposed by a coalition of conservative groups, would help level the current uneven playing field, where wealthy interests spend enormous sums on paid mass communications aimed at lawmakers. Many of these "Astroturf" campaigns, an allusion to fake grassroots, are carried out under appealing names that mask the corporate interests behind them. Successful reforms would change this dynamic, giving the public information about who is funding advertising campaigns during legislative debates.

Another controversial provision was defeated in committee. The Collins-Lieberman bill originally included a provision to create an Office of Public Integrity, which would be responsible for investigating ethics complaints and referring cases to both the House and Senate Ethics Committees. Sen. George Voinovich (R-OH), who serves on this committee and is also the chair of the Select Committee on Ethics, led the effort, which was joined by other Ethics Committee members, to successfully strip the independent ethics office provision from the bill. Collins, McCain, and Sen. Barack Obama (D-IL) are expected to fight for reinserting the public integrity office provision.

Lieberman will reportedly offer an amendment that would make lawmakers who fly on privately-sponsored jets pay the full market price for those trips. Sen. Ted Stevens (R-AK), is expected to oppose the amendment, citing the needs of members from large rural states that often depend on private planes to traverse their states.

The Democrats may try to offer an amendment to ban all privately funded travel, although a similar provision was rejected by senators during the drafting process.

How the House will act on lobby reform remains unclear. Despite the slew of ethics reform bills pending in committee, Republican leaders have not backed specific legislation. The House Rules Committee has held a hearing on the subject, which took place March 2 and is the first in a series to determine how to improve House gift and travel rules. At the hearing, Rep. Louise Slaughter (D-NY), the committee's ranking member, advocated for the House Democrats reform package, offered on March 1 to "crack down on the serial abuses of the conference process." Rules Chairman David Dreier (R-CA) noted that reform has begun in the form of a House resolution eliminating floor and gym privileges for former members. He went on to say that he hopes to incorporate "portions of [the Democrat proposal]" into an eventual committee reform bill. The next House

Rules committee hearing is scheduled for March 9 at 10am.

Treasury Shuts Down Muslim Charity

On Feb. 19 the Treasury Department froze the assets of KindHearts USA, padlocking the doors of the Toledo-based charity "pending an investigation." The Treasury Department claims the group has connections to Hamas, but KindHearts officials vigorously denied the allegations. The official closure of KindHearts makes it unlawful for U.S. citizens, businesses, and organizations to carry out transactions with the organization. In response, a coalition of Muslim groups sent a letter to Treasury Department Secretary John Snowe on Feb. 28 requesting a meeting to discuss "the continued targeting of Muslim charities without due process of law."

The Treasury Department announcement stated, "KindHearts officials and fund-raisers have coordinated with Hamas leaders and made contributions to Hamas affiliated organizations." Hamas has been designated as a terrorist organization by the U.S. government. Stuart Levey, Treasury Under Secretary for Terrorism and Financial Intelligence, said, "KindHearts is the progeny of Holy Land Foundation (HLF) and Global Relief Foundation (GRF)," groups that were shut down by Treasury in 2001. The announcement says "former GRF official Khaled Smaili established KindHearts from his residence in January 2002... KindHearts leaders and fundraisers once held leadership or other positions with HLF and GRF."

KindHearts describes itself as a humanitarian aid organization. KindHearts raised $5.1 million in 2004 and has branches in Lebanon, the Gaza Strip and Pakistan. The Treasury Department alleges it gave more than $250,000 to the Sanabil Association for Relief and Development, which was designated as a terrorist organization in August 2003. KinderHearts board chair Dr. Hatem Elhady told the *Toledo Blade*, however, that it contracted with Sanabil to provide aid in refugee camps before the designation was made, and the amount was no more than $115,000, saying, "We did not just give money. We gave it for specific projects, and we saw the results, and we have the receipts."

The Treasury Department also cites a KindHearts "connection" to a former employee of HLF who was indicted by a federal grand jury in Texas for providing material support to Hamas. Mohammed El-Mezain had been retained to raise funds for the organization, but Smaili said the contract was voided as soon as KindHearts learned about the indictment. The case has not yet come to trial.

Jihad Smaili, an attorney and KindHearts board member, rejected the Treasury Department's allegations: "I know the government has listened to every conversation that we've made and traced every wire sent from KindHearts USA to Lebanon or Palestine," he said. "They know exactly what's going on and that we have not done anything wrong." Smaili noted that by using its authority under Executive Order 13224, the Treasury Department does not have to prove its allegations in court. There is no deadline for the Treasury Department to complete its investigation, making it likely that the organization will go out of business even if it is ultimately cleared.

A statement from KindHearts explains that over $1 million was frozen, most of which had been earmarked for earthquake victims in Pakistan and for a new office in Indonesia. It called on the Treasury Department to ensure the funds are used for humanitarian aid, stating:

> *KindHearts is prepared to agree to the distribution of the funds currently held by our Government, except for those funds that will be expended on payment to employees for past services provided and for upcoming legal*

fees, to be spent under the auspices and administration of the USAID Program (of which KindHearts is a member) or any other NGO (United Nations, Red Crescent, etc.) on KindHearts programs, or any other humanitarian program that it deems justified. However, KindHearts requests that special consideration be given to the refugees in the earthquake ravaged areas of Pakistan since the overwhelming majority of frozen funds were earmarked for projects therein.

The statement notes that KindHearts was among the Muslim organizations investigated by the Senate Finance Committee, which found no wrongdoing.

The response in the Muslim community to KindHearts' closure was decidedly and not surprisingly negative. A coalition of 10 national Muslim groups, the American Muslim Taskforce on Civil Rights and Elections (AMT), sent a letter to Treasury Secretary John Snowe stating, "As leading American Muslim organizations, we note that although we understand the political climate of our country and support our government's efforts to thwart terrorist financing; we find it unfair that our government has yet made another extrajudicial decision to effectively wipe-out more than five years of humanitarian assistance to the world's needy by the mere stroke of a pen. The immediate effects of KindHearts' closure have already been felt in orphanages, schools, shelters, and medical centers around the world."

A Treasury spokeswoman would not comment on the meeting request.

HHS Gives Guidance on Federal Funds, Religious Programs

Settling a lawsuit filed by the American Civil Liberties Union (ACLU), the U.S. Department of Health and Human Services (HHS) has agreed to suspend funding of a nonprofit accused of using taxpayer dollars to present religious messages in a federally-funded sexual abstinence program.

Under the terms of the settlement, reached on Feb. 23, HHS has agreed to withhold the $75,000 grant it made to Silver Ring Thing (SRT), a Pennsylvania-based nonprofit that runs faith-based sexual abstinence education programs for teens across the country. SRT will not be eligible for any more federal funding unless it changes its program to ensure the money is not used for religious purposes.

As part of the settlement, HHS agreed to continued suspension of the current grant and quarterly monitoring of SRT by HHS to ensure future compliance with any grant requirements. Additionally, any grant requests made by SRT must include a complete description of proposed program activities, what actions they will take to comply with the HHS guidelines, and how the federal funds will be spent and accounted for. If SRT is given a federal grant, or a congressional earmark - most of its federal moneys have come through earmarks requested by Sens. Rick Santorum (R-PA) and Arlen Spector (R-PA) - the ACLU is to be notified by HHS. The settlement agreement expires Sept. 30, 2008.

In May 2005, the ACLU filed a lawsuit against HHS, accusing the department of allowing SRT to use federal funds for primarily religious purposes. The suit charged the nonprofit violated the First Amendment because the federally funded abstinence program was not adequately segregated from its religious program. Specifically, the ACLU said the group's high-tech, three-hour road show - paid for with federal funds - provided Bibles and silver rings with religious messages for teens to wear as

a token of their pledge of chastity until marriage.

Three months after the suit was filed, HHS suspended funding for the program. In a Sept. 20, 2005 letter to SRT, HHS stated misgivings that "the federal project that is funded ... includes both secular and religious components that are not adequately separated." HHS asked SRT to submit a Corrective Action Plan in order to receive the remaining grant funds.

That letter included six steps SRT needed to take to separate government-funded activities from religious activities:

- **Separate and Distinct Programs**: There must be separate and distinct programs for religious and secular instructions and teachings, and the distinction must be clear to the consumer. This could be achieved by creating different and distinct names and promotional materials, and promoting only the federally funded parts of the programs with federal money.
- **Separate Presentations**: Presentations must be separated by time or location. The presentation could be held in "completely different sites or on completely different days." HHS clarified that if the programs are held on the same site but at different times, there should be sufficient time to end one program before the other begins, and participants should be dismissed from one program before beginning another. If the programs are held at the same time but at different locations on the same site, there should be separate registrations, and separate rooms should be divided by floors or hallways.
- **Religious Materials**: Eliminate all materials with religious content from the federally funded abstinence program.
- **Cost Allocation**: Federal money is only to be used for federal programs. This should be demonstrated using time sheets to tally staff hours, particularly when employees work in both the religious and secular programs. If employees work on both programs on the same day at the same site, they must clearly account for their hours worked in each program. Cost allocation should be shown for all staff time, equipment and travel. For example, if secular and religious traveling programs are presented at the same site on the same day, the costs must be split between federal and private money.
- **Advertisements**: Federally funded programs cannot advertise the grant program services only to religious target populations.
- **Invitation to Religious Program**: At the end of a federally-funded program, participants may be invited to attend another religious abstinence education program. But the invitation must be "brief and non-coercive" and make clear that it is a separate and voluntary program.

Federal regulations require that faith-based organizations provide religious programs at a separate time and/or location from publicly funded programs. With the inclusion of the required "safeguards" in the settlement documents, HHS has provided the first clear guidance in what constitutes adequate separation.

SRT may apply for new federal grants, although SRT founder Dennis Pattyn says the organization will not be doing so. If the nonprofit does apply for additional federal funds, it will be required to demonstrate how it will be separating its religious message from its federally funded abstinence program.

Report, Announcement on IRS Program to Curb Partisan Activity by

Charities, Religious Groups

On Feb. 24 the Internal Revenue Service (IRS) released its much-anticipated assessment of its program created in 2004 to enforce the ban on partisan election activity by charities and religious organizations. The report found that nearly 75 percent of organizations investigated had violated the ban. At the same time, the agency released guidance that includes detailed examples based on the types of situations that led to investigations in 2004. While continuing to expand its educational efforts, the IRS also announced it will step up enforcement for the 2006 election cycle, releasing new procedures for expedited handling of referrals alleging violations, in an effort to end any ongoing violations.

The day of the release of both the report and new procedures, IRS Commissioner Mark Everson cited the need for increased enforcement in a ">speechto the City Club of Cleveland, noting that there has been "a dramatic increase in the amount of money financing politics." He asked the audience, "Are we going to let these political activities spread to our charities and churches?", to which he answered by calling for action "before it is too late." Everson described the 2004 enforcement program that was intended to "stop improper activity during-not after-the election cycle," and went on to explain that in 2006 the IRS will start the program earlier in the year; expand staff dedicated to the project; and increase its outreach and educational efforts.

The report on the 2004 Political Intervention Compliance Initiative (PACI) said it reviewed complaints filed against 132 nonprofit (501(c)(3)) organizations, 22 of which were found to not merit further investigation. The IRS has completed 82 of the remaining 110 examinations, finding partisan activity occurred in 58 of reviewed cases. Of these only three warranted revocation of tax-exempt status. In the remaining 55 cases the IRS issued written advisories and, for one organization, an excise tax. According to the IRS advisories were issued "when the Service believes the organization engaged in prohibited political activity, but the activity appeared to be a one-time, isolated violation, and the organization corrected the violation where possible...and took affirmative steps to ensure it would not violate the prohibition in the future." Groups that receive advisories are warned that future violations risk revocation of exempt status.

The common fact situations, noted in the report, that led to findings that groups had crossed the line into partisan activity were:

- Distribution of printed materials that encourage members to vote for a candidate (24 alleged, 9 determined)
- Endorsements from the pulpit (19 alleged, 12 determined)
- Support for a candidate on the organization's website (15 alleged, 7 determined)
- Distribution of partisan voter guides or candidate ratings (14 alleged, 4 determined)
- Campaign signs displayed (12 alleged, 9 determined)
- Preferential treatment given some candidates to speak at events (11 alleged, 9 determined) and
- Cash contributions to a political campaign (7 alleged, 5 determined)

Twenty-eight cases remain open.

IRS enforcement activity in 2006 will be expanded, using a centralized process allowing quick response to referrals and complaints. Cases will be classified as:

- Type A (single issue/non-complex), which would typically be resolved through correspondence and involve only one organization,
- Type B (multiple issue/complex), involving multiple organizations or issues, and required review of books and records, and
- Type C (egregious/repetitive), that require immediate IRS action.

Special procedures apply to churches, in compliance with tax code provisions intended to limit government intrusion into church affairs.

Fact Sheet 2006-17 summarizes the IRS interpretation of the ban on intervention in elections in a variety of fact situations, covering voter mobilization and education, individual activity by leaders, candidate appearances, issue advocacy vs. political campaign intervention, voter guides, websites, business activity, and multiple or combined activities. Its issue advocacy section states that "501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office" but "must avoid any issue advocacy that functions as political campaign intervention." The IRS will consider all facts and circumstances to determine which is which, and lists factors that help determine whether a statement is issue advocacy or partisan, examining whether an activity:

- Identifies one or candidates
- Expresses approval or disapproval of one or more candidates' position on an issue or an action taken
- Is made close to the date of the election or refers to voting and the election
- Raises an issue that distinguishes candidates
- Is part of an ongoing series on the issue that are not timed to the election and
- Is timed to influence an non-electoral event, such as a vote on specific legislation.

The new procedures do not establish criteria for the IRS to filter out referrals made by people or groups that intend to harass political opponents or watchdog groups. Shortly after the IRS announcement the *Washington Post* reported that Rep. Sam Johnson (R-TX), a member of the House Ways and Means Committee who sits on a committee with oversight of the IRS, sent a letter to the IRS requesting an investigation of Texans for Public Justice. The group, founded in 1997, tracks the influence of money on politics in Texas and publishes detailed reports on campaign spending and corporate lobbying. A 2003 report by Texans for Public Justice on illegal corporate spending in the 2002 reelection campaign of Rep. Tom Delay's (R-TX) led to a criminal indictment for Delay.

The 2003 IRS examination of Texans for Public Justice, which included two auditors reviewing its books, found no violations. Founder Craig McDonald said the audit was "political retaliation by Tom DeLay's cronies to intimidate us for blowing the whistle on DeLay's abuses." The IRS said political considerations do not enter into its decisions, noting that two career employees must agree there is cause for a review before it can proceed.

The Texas case illustrates the potential problems inherent in the IRS's 2006 enforcement plan. The combination of abuse of the enforcement system in order to harass and the IRS's expedited procedures could silence nonprofits critical of public officials. The new enforcement process appears to focus on deterrence prior to any finding of wrongdoing. Hopefully the IRS will continue to fine tune its procedures to address these problems.

New PART Scores Showcase More Contradictions of Program

The president's recent budget, released in early February, contained another round of federal program assessments produced by the Office of Management and Budget using the administration's Program Assessment Rating Tool (PART). As in past years, this new round of PART scores and associated budget requests call into question the value and purpose of PART ratings, which appear to have little logical and no discernable link to budget requests.

Shortly after the Office of Management and Budget released the President's FY 2007 budget, the agency released a list of the 141 programs slated of cuts or elimination in the president's State of the Union address due to their lack of results. These cuts to discretionary programs would save nearly $15 billion in FY07--$7.3 billion by terminating 91 programs and $7.4 billion by cutting funding for another 50--a drop in the bucket in the larger budget picture. This year, the administration's funding recommendations not only continue to illustrate the subjectivity and inconsistency of the PART itself, but also calls into question the reasoning underlying the PART, that is, the White House's dedication to good program management and objective results.

Last year, President Bush suggested cutting or terminating 154 federal programs, of which less than one-third had been reviewed using the PART. Congress accepted 89 of the President's proposals, cutting a total of $6.5 billion from federal spending. This year, Bush is suggesting terminating 91 programs and reducing 50 others. By far the greatest cuts under the proposal--almost $3.5 billion--would come from the Department of Education.

Just like last year, of the 141 programs slated for cuts and termination by President Bush, less than one-third have gone through the PART process. Among the 45 programs on the president's list that did receive PART ratings, 12 were rated "adequate" and three received the second highest mark of "moderately effective." No programs singled out by the president received the tool's highest rating of "effective."

Among the remaining programs slated for cuts, 12 received the lowest rating of "ineffective." Seventy-five percent of those ineffective programs were slated for complete elimination, and one, the HOPE VI program in the Department of Housing and Urban Development, was slated for rescission, funding cuts, this year.

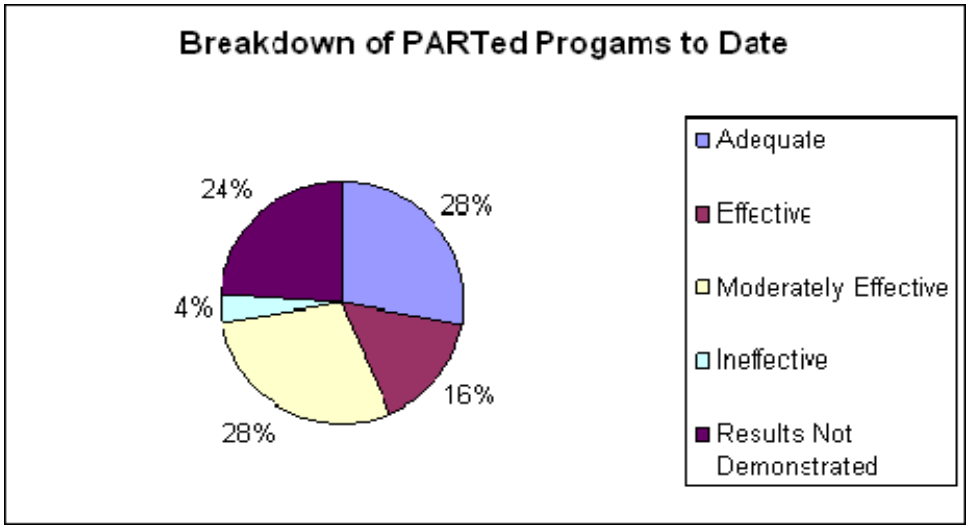
Forty percent of the PARTed programs slated for cuts received the rating of "results not demonstrated (RND)," meaning the PART programs were unable to develop acceptable performance goals or collect data to determine whether it is performing. Often these programs collect data, undertake rigorous performance assessments, and set goals of their own--data often found, however, to be unacceptable to OMB.

Under the PART, programs can be penalized for following congressional statutory intent or implementing Supreme Court rulings. The PART allows OMB, and in turn the president, to insert their own perspective and objectives into the oversight and budgeting functions ordinarily reserved for the legislative branch. This has implications for the balance of powers between the three branches of the government, particularly if the PART were to be, as has been proposed, used in budgeting decisions made by Congress.

A Broader Look at PART

This is just one of many significant problems with the PART. To date, roughly 80 percent of all

government programs have been rated by the PART, and by this time next year all programs will have gone through the process once. Below are the ratings for all government programs to date:



Of the programs rated ineffective since the first year the PART was used, four have been slated for funding increases by the administration. It is unclear why certain "ineffective" programs should be terminated outright, while others should receive funding increases. It is also difficult to determine whether a failing program could be turned around with additional resources or if the program is a lost cause. This subtlety is lost in the PART questionnaire.

Further, a connection is lacking between PART ratings and budget requests. For example, 125 programs have been rated effective over the last four years, of which 35 were proposed for funding cuts in the current budget, 11 saw their funding remain the same, and the remaining 79 saw funding increases. This seemingly arbitrary funding pattern illustrates substantial inconsistencies with the PART, pointing to the subjectivity of PART evaluations.

Subjectivity and political bias in the PART also seems apparent when survey how budget requests are handled for programs that fall under the category of "results not demonstrated." Of the over 800 programs which have been evaluated to date, 189--almost 25 percent--have been rated "results not demonstrated." Comparing the RND programs from the Department of Education (historically opposed by Republicans) and the Department of Homeland Security (created by this president) one immediately is struck by the inconsistency of PART rating and budget requests. The president proposed cutting nearly 25 percent of the Education Department's RND programs, but just 6 percent of those in the Department of Homeland Security.

Perhaps most ironic is the Federal Emergency Management Agency's PART score of "adequate" awarded before its incredibly inept and calamitous response to Hurricane Katrina, particularly in light of programs with proven track records of success, such as Upward Bound, receiving ratings of "ineffective."

OMB Deputy Director Clay Johnson, who is the administration's point person on PART, has done little to clarify these inconsistencies. Before the House Budget Committee in a hearing on government performance on Feb. 16, Johnson testified on the use of PART and on the government's new PART website, expectmore.gov.

The website allows individuals to view all completed PART questionnaires and includes very short descriptions of actions taken as a result of the PART rating. During the hearing, Rep. Brian Baird (D-WA) was particularly effective in exposing the inconsistent way budget requests are made for different programs receiving the same PART rating. Johnson implied that administrative priorities--and not merely the PART--allow for some programs to receive funding increases, and others to receive cuts, such as in the case of the "results not demonstrated" category. In the cutthroat budget squeeze, when it comes down to guns vs. butter, it was apparent in listening to Johnson that the rating tool of the administration appears to favor guns regardless of PART scores.

Johnson also mentioned in his testimony that government performance is important and accountability necessary when it comes to spending taxpayer dollars, a statement with which few would argue. Yet the OMB's PART is neither a true government performance tool or an objective analytical mechanism. There is little evidence PART scores are comprehensively and objectively used in an unbiased manner to inform the development of the president's budget requests. Rather, it seems the president's rhetorical focus on performance and results is merely a smokescreen providing cover for a predetermined political agenda, seeking to promote a particular ideology while drastically reducing the size of the federal government.

President Restarts Push for Line-Item Veto

In his State of the Union address, President Bush once again proposed the line-item veto to Congress as a way to reduce deficit spending. While Bush is touting this "tool of fiscal discipline," in reality unchecked use of the line-item veto by the president would be akin to letting a kid loose in a candy store, transferring inordinate power from the legislative to the executive branch, and effectively allowing the president to substitute his spending priorities directly for that of Congress.

The proposal would give Bush similar, but not identical, powers to those granted to President Clinton that only achieved minimal savings. Clinton was given use of the line-item veto in 1996 by a Congress concerned over its own lack of fiscal discipline. It granted the president authority to "cancel discretionary appropriations, any new item of direct spending (entitlements and other mandatory programs), and certain limited tax benefits," according to a May 2005 report from the nonpartisan Congressional Research Service (CRS). In 1998 the Supreme Court deemed the Line Item Veto Act unconstitutional, because it violated the constitutional requirement that legislation be passed by both houses of Congress and then presented *in its entirety* to the president for signature or veto.

Bush's line-item veto proposal would be considerably weaker than the version struck down by the Supreme Court. It would require Congress to cast an up-or-down vote on a package of rescissions proposed by the president to spending or tax bills previously passed by Congress. In order to skirt the constitutional problems, Congress would be required to vote within 10 days of the president having proposed such a package. Like reconciliation bills, the package from the president would not be subject to amendment and would be protected from filibuster in the Senate. Unlike a regular presidential veto, which requires a two-thirds majority in Congress to override, a simple majority would be required to adopt the president's changes. Similar proposals have been floated in the past, but have been beaten back in both chambers most often by congressional appropriators. Some congressional supporters are hopeful that Bush's proposal will gain momentum in Congress now, in light of the corruption scandals involving former Rep. Randy "Duke" Cunningham and lobbyist Jack Abramoff, as well as public outcry over the transportation bill passed last year that was chocked full

of thousands of earmarks.

Bush has made it quite clear that he would like to reinstate the line-item veto. An anonymous White House official recently told the *New York Times*, that the President will ask Congress for a line-item veto power as early as this week.

According to a CRS report and other independent analyses, however, possible savings from the line-item veto are relatively small. A series of 1995 House hearings on the Line Item Veto Act included testimony from OMB and CBO officials that an line-item veto would not have a huge impact on reducing the deficit. CBO Director Robert Reischauer cautioned that, at times, governors, many of whom have line-item veto powers because of state balanced-budget requirements, used the line-item veto to insert their own spending priorities instead of reducing state spending by the legislature. He alluded to the same concern on a national level, where the president could use this power to further his own political agenda rather than cutting unnecessary spending.

CRS estimates that giving President Bush this power for FY 2007 would end up achieving approximately $1.5 billion in annual savings, a miniscule reduction of the deficit, currently projected to reach upwards of $400 billion. This hardly seems worth the risks of altering the balance of power among the three branches of the federal government. Similar to other initiatives and budget process changes trumpeted by the president, the proposal is little more that a power grab, put forward under the guise of fiscal restraint but whose real affect would be increased control over the budget process for the White House.

Senate Rules Committee Passes Process Reforms

Last week, the Senate Rules Committee and the Homeland Security and Government Affairs Committee marked up separate versions of lobbying and congressional ethics reform bills, starting the ball rolling in the Senate on reform after the scandals surrounding former lobbyist Jack Abramoff and former Rep. Duke Cunningham (R-CA). The two bills are expected to be combined. The resulting bill will likely seek to increasing transparency around the earmarking process; further restrict practices that lead to abuses of power in conference committees; and allow outside advocates and citizens to more easily track decision-making throughout the budget process.

The Rules Committee marked up the "Legislative Transparency and Accountability Act of 2006" on Feb. 28 and passed the bill out of committee with a unanimous 18-0 vote. The bill, authored by Committee Chairman Trent Lott (R-MS), focuses on disclosure of earmarks and would require a supermajority of 60 senators to approve each earmark if a point of order is raised on the Senate floor. In the past, stripping a provision from a conference report would have sent the entire bill back to committee. Under Lott's proposal, only the earmark provision would be stripped and the bill could continue to move forward, with the revised conference report with the earmark removed being sent back to the House for a vote.

Lott had strongly opposed restrictions on earmarks, opting instead for this disclosure mechanism. Lott's original plan, however, only required a simple majority to override a point of order and retain the earmark. Sen. Dianne Feinstein (D-CA) offered an amendment in committee, which passed, to change the 50-vote point of order to a 60-vote point of order.

The term earmarks includes spending bills, authorizing legislation, tax provisions, and other revenue

items. It applies to a provision that identifies an entity, other than the federal government, that is to receive funding, through a government contract or grant for instance. Lott's bill would require all such earmarks to be identified clearly by the sponsor and to have an accompanying justification. Any earmarks in a bill, amendment, or conference report also must be made publicly available via the Internet 24 hours before its consideration. The bill would create a new Senate website that would display this information.

Other major provisions in the bill include:

- The elimination of floor privileges for former members of Congress, Senate officers and House Speakers who are registered lobbyists, foreign agents, or employed by someone who is lobbying on a legislative proposal.
- A ban on gifts from registered lobbyists or foreign agents. This excludes the cost of meals, however, which would be required to be posted on the Member's website within 15 days and would continue under existing dollar limits.
- A ban on travel that is paid for by registered lobbyists and foreign agents. Lawmakers wanting to accept paid travel from others must receive pre-clearance from the Senate Ethics panel and certify that the travel is not paid for by lobbyists or foreign agents and that the travel sponsor did not receive funds from such sources to pay for the travel. Information about such travel is to be posted to a member's website within 30 days of the trip.
- A provision requiring members or staff to report all details about flights taken on private aircrafts.

On the other side of the Capitol, the House has yet to put much effort into a lobby and ethics reform package, with Majority Leader John Boehner (R-OH) simply noting he expects lobbying reform legislation to "move in the coming weeks."

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Senate Approves Disappointing Budget Resolution

Last week before leaving town for another weeklong recess, the Senate approved its Fiscal year 2007 budget resolution. The resolution is a significant departure from President Bush's proposed budget submitted earlier this year, dropping the president's Medicare cuts, not extending tax cuts, and adding over $16 billion in discretionary spending above the president's request. Despite these changes that make it more election-friendly for Senate incumbents, the budget continues to fall short of the sound budget policy desperately needed to stem the growth of deficits.

The resolution was approved 52 - 48, with one Democrat voting with Senate Republicans and five GOP members crossing party lines to vote against the resolution. Sen. Mary Landrieu (D-LA), the lone Democrat supporter of the resolution, voted for the budget, according to *Congressional Quarterly*, in exchange for language giving her state "a sizable chunk of federal revenue from ANWR leases, offshore oil and gas leases and the federal auction of broadcast frequencies that television stations will hand back when they switch to digital telecasts." Landrieu has been on a crusade to increase spending for reconstruction of levees and wetland restoration along the Gulf Coast of Louisiana in the aftermath of Hurricane Katrina.

Republicans who voted against the resolution, drawn from the handful of GOP members that place logic over party affiliation, believed the budget did not represent the right priorities and lacked fiscal discipline by not addressing the dwindling tax base. These Senators included Sens. Lincoln Chafee (R-RI), Susan Collins (R-ME), Norm Coleman (R-MN), and Mike DeWine (R-OH). One notable surprise was Sen. John Ensign (R-NV), who voted against the bill because he felt it did not cut enough spending.

The Senate considered 33 amendments over 50 hours of debate throughout last week, finally approving nine of the amendments. In total, the Senate approved over $16 billion in additional discretionary spending on a variety of programs including the Low-Income Home Energy Assistance Program (LIHEAP), education and job training programs, veteran's health benefits, community development, and maritime security.

The Senate also rejected two separate amendments restricting spending, including capping discretionary spending and another round of cuts to entitlement programs, as the president proposed in his budget. Sen. James Inhofe's (R-OK) amendment to cap spending at 2006 levels for the next two years was rejected 35 - 62, and Sen. John Cornyn's (R-TX) amendment to include reconciliation provisions to cut mandatory spending failed 43 - 57.

But perhaps the most important amendment offered was Sen. Kent Conrad's (D-ND) pay-as-you-go (PAYGO) amendment that would have reinstated expired rules requiring both tax cuts and entitlement spending increases to be deficit-neutral. When in place in the 1990s, the rules successfully forced Congress to enact responsible budget and tax policies that reduced deficits and led to a short run of surpluses in the federal budget. Those surpluses were short-lived, however, as the rules expired in 2002 and the administration went on a spending and tax cut spree.

The amendment was expected to pass, with one key Republican Senator, Tom Coburn (R-OK) voting twice last fall to support PAYGO during votes that lost 50-49 each time. Former Sen. Jon Corzine (D-NJ) - a supporter of PAYGO rules - was absent from those votes while campaigning for governor of New Jersey, and his replacement Sen. Robert Menendez (D-NJ) could have cast the deciding vote and approve the amendment. Yet Coburn, demonstrating neither consistency nor conviction, changed his vote and opposed the amendment when it really counted, causing it to fail again by a vote of 50-50.

In another blow to a proper budget process, the resolution was approved including language to authorize drilling in the Arctic National Wildlife Refuge (ANWR). A setback for environmentalists who want to preserve the Refuge as one of the last untouched natural areas in the United States, the filibuster-protected provision also represents one of the worst abuses of the budget process, included while having absolutely nothing to do with the federal budget.

Opening of ANWR was attempted in the Senate last year as well, when Sen. Ted Stevens (R-AK) used his influence to add the ANWR language during the conference committee of the budget cuts bill passed in early 2006. It was eventually removed because it threatened the success of the budget bill. In both these instances, this provision should be considered in separate legislation brought to the Senate floor by the committee with oversight over the nation's energy policy, not in budget bills seeking to outline the nation's spending priorities.

The House of Representatives is far behind the Senate in construction and approval of its budget blueprint, with the House Budget Committee markup still at least a week away. In sharp contrast to the Senate, the House Budget Committee is expected to unveil a far more draconian budget resolution that could include a new round of deep cuts to domestic programs and possibly reconciliation provisions to cut entitlement programs and/or extend more tax cuts. It is also possible the House budget bill will include negative budget process changes such as the

president's recent request for enhanced rescission power - or a new version of the line-item veto.

The final version of the Senate resolution is likely to draw sharp criticism from conservative House members and House Democrats for varying reasons, and negotiations toward a final compromise are already expected to be extremely difficult. Since the budget resolution is not a binding document, appropriations committees can still begin developing their spending bills if the negotiations drag on past May 15 or if Congress cannot agree to a compromise. This was the case two years ago when no budget resolution was adopted.

Income Inequality Has Intensified Under Bush

Though the Bush administration continues to laud the strength of the economy and the success of its economic and tax policies, a large percentage of Americans are continuing to struggle to make ends meet as income growth has become increasingly concentrated at the top of the income scale. Income inequality, in fact, is at an all-time high, illustrating that current tax, budget, and wage and employment policies are all not working in favor of average American families.

The country experienced relatively broad-based wage growth during the latter part of the 1990's, but this growth ended with the 2001 economic downturn. Growth in real wages for low- and moderate-income families began to slow, and by 2003 wages began to decline and have not picked up in real terms. The economic recovery after the recession, one of the weakest recoveries on record, has not been diverse enough to generate the kind of income gains among low- and middle-income families seen over the last decade.

This real wage stagnation comes despite economic expansion over the last two years, relatively strong Gross Domestic Product (GDP) growth of late, and record highs for corporate profits in many sectors. These gains have not been reflected in job and wage growth across the board for averages workers. Real hourly wages fell for most low- and middle-wage workers by 1 - 2 percent last year and have not increased since 2000 after adjusting for inflation. In addition, the Federal Reserve recently reported in its Survey of Consumer Finances that average income for American families declined 2.3 percent between 2001 and 2004 after adjusting for inflation.

Compounding this trend has been Congress's utter inability to pass even one minimum wage increase in the last nine years. The federal minimum wage still sits at $5.15 per hour and has lost over 17 percent of its purchasing power since 1997. In 2005, minimum wage workers earned only 32 percent of the average hourly wage and in fact, the wage would have to rise to $8.20 just to reach *half of the current average hourly wage*. If Congress fails raise the minimum wage this year, it will mark the longest stretch the wage has remained unchanged since it was instituted in 1938 and the greatest inequality between minimum wage and average wage earners since the end of World War II.

The connection between the drastically low minimum wage and growing economic inequality seems to have escaped notice only in the nation's capitol. Eighteen states have now enacted higher state minimum wages, and many others are currently considering increases of their own. According to the Ballot Initiative Strategy Center, as many as 30 states could consider legislative proposals this November to increase the minimum wage or tie it directly to inflation.

Other Bush administration policies have contributed to these negative income trends, particularly the regressive redistribution of federal revenues through the President's tax cuts. The Bangor Daily News summed up the problem succinctly:

> *"Suppose that the administration's tax cuts, which began in 2001, remain in effect until 2015. Over these 15 years, more than half of the tax cuts - 53 percent - will go to people*

with incomes in the top 10 percent, according to studies commissioned by The New York Times. And 15 percent of the cuts will go to the top one-tenth of 1 percent of taxpayers. By 2015 the tax cuts, if retained, will provide average yearly tax savings of $23 to taxpayers in the bottom 20 percent. The wealthy will fare better. The top one-tenth of 1 percent of all taxpayers will save an average of $196,000 a year, or a total of $2.9 million over the 15 years. By 2015, the top 1 percent of taxpayers will pay a lower share of total taxes than they did in 2001."

Far from distributing money back to average American families, the Bush tax cuts overall have profited the super rich, leaving the vast majority of Americans with comparatively little or nothing to show for it. This has only made the distribution of income and wealth across America more skewed.

Showing further evidence of an exacerbated income gap, the Center on Budget and Policy Priorities and the Economic Policy Institute recently released Pulling Apart: A State-by-State Analysis of Income Trends, a study highlighting the growing gap between rich and poor. The study finds that this gap -- mainly between the highest-income families and low- and middle-income families -- grew significantly between the early 1980s and the early 2000s. During this period of time, the incomes of the bottom fifth of families grew more slowly than the incomes of the top fifth of families in 38 states; the incomes of the rich grew by an average of 62 percent, while the incomes of the poor grew by an average of 21 percent. Additionally, in 39 states the incomes of the middle fifth of families grew more slowly than the incomes of the top fifth of families.

The five states with the largest income gap between the top and bottom fifths of families, according to the study, are New York, Texas, Tennessee, Arizona, and Florida. The five states with the largest income gaps between the top and middle fifths of families are Texas, Kentucky, Florida, Arizona, and Tennessee. Generally, income gaps are larger in the Southeast and Southwest and smaller in the Midwest, Great Plains, and Mountain West.

These trends indicate a fundamental inconsistency and unfairness within our economic system that threatens the well-being of future generations. Jared Bernstein, a senior economist at the Economic Policy Institute, makes this point, explaining, "When income growth is concentrated at the top of the income scale, the people at the bottom have a much harder time lifting themselves out of poverty and giving their children a decent start in life. A fundamental principle of our economic system is that the benefits of economic growth will flow to those responsible for their creation. When how fast your income grows depends on your position in the income scale, this principle is violated. In that sense, today's unprecedented gap between the growth of the typical family's income and productivity is our most pressing economic problem."

Growing income inequality in America did not happen by accident and it cannot fix itself. It will take proactive changes from policy makers at the state and national level to help reduce the gap and truly level the economic playing field to create a more robust environment for opportunity for all. Raising the minimum wage, as well as adjusting it annually for inflation, would be one small but necessary first steps toward reducing the enormous income disparity in America today.

Despite the White House's selective use of economic data and sweeping generalizations about the overall strength of the economy, mining the data actually paints a much drearier picture, one in which most Americans are not making progress but actually losing ground, while the wealthy prosper more and more. This trend will only worsen unless more just and sensible fiscal and economic policies are adopted.

White House Continues False Rhetoric on Impact of Tax Cuts

Attempting to justify the Congressional GOP's push to extend and make permanent President Bush's first term tax cuts, many Republican legislators and pundits, including the vice president, have recently claimed tax cuts pay for themselves by spurring economic growth. While this argument bolsters their call for tax cut permanence, the evidence shows the claim is more fiction than hard fact.

The first evidence pointing to the dubiousness of these claims is the tax cuts have yet to actually pay for themselves. The government has run massive, sustained deficits each year since the tax cuts were enacted and according to the president's own budget numbers, will continue to bring in insufficient revenue to close that gap. The Center on Budget and Policy Priorities (CBPP) has recently calculated that federal revenues in the three years following the president's tax cuts (2003 - 2005) have been $316 billion below what the administration had forecast before the cuts were adopted (*Claim That Tax Cuts "Pay For Themselves" Is Too Good To Be True*, Center on Budget and Policy Priorities, Mar. 8, 2006).

In fact, the administration itself does not believe the tax cuts will recover enough revenues through stimulated economic growth, as its own budget forecasts have continuously shown revenue growth to be smaller than historical averages, causing sustained deficits in the decades to come.

While there have been other forces involved in recent deficits, such as the recession during the president's first term and increase military and defense spending since Sept. 11, a study by the CBPP has shown the primary factor contributing to current deficits has been the tax cuts enacted in 2001 and 2003 (*Tax Cuts Have Played Much Larger Role Than Spending Increases In Current Deficit*).

Challenges to the administration's claims about its economic policies are nothing new. For years, prominent economists and analysts, some of whom have worked for the president, have called into question evidence to support the claim that tax cuts replace anywhere near the full amount of lost revenue. Ironically, the first group to cast doubt on such claims was the president's own Council of Economic Advisors (CEA). In 2003, during the debate over yet another round of huge tax cuts, Glenn Hubbard, then chairman of the CEA, maintained that less than half of the tax cuts would be replaced by increased economic growth, even in the best case scenario.

Hubbard's successor as chairman of the CEA had still harsher criticisms of the tax cuts. Greg Mankiw, who served as the chairman of the CEA from 2003 until 2005, wrote that there is "no credible evidence" that tax cuts pay for themselves and, in an often quoted line, an economist who makes such a claim is a "snake oil salesman who is trying to sell a miracle cure" (*Principles of Economics*, Gregory N. Mankiw, 2003).

This sentiment was repeated in the CEA's *Economic Report of the President* in 2003 that stated, "Although the economy grows in response to tax reductions (because of higher consumption in the short run and improved incentives in the long run), it is unlikely to grow so much that lost tax revenue is completely recovered by a higher level of economic activity" (*2003 Economic Report of the President*, pg. 58).

Many analysts have drawn similar, if not quite so rosy, conclusions. A recent report by the Congressional Budget Office (CBO) explored the economic and budgetary impact of a theoretical 10 percent cut in income tax rates under a wide variety of scenarios. The CBO concluded the budgetary impact could be estimated to offset between 1 and 22 percent of the lost revenue from

the tax cuts in the first five years and could in fact *decrease those offsets by 5 percent in the second five years*. Even under the most optimistic of circumstances, CBO found any offset of the tax cuts to be almost 25 percent less than Dr. Hubbard's 40 percent estimate (*Analyzing the Economic and Budgetary Impacts of a 10 Percent Cut in Income Tax Rates*, Dec., 2005).

Studies by the Federal Reserve Board, the Congressional Research Service, and independent analysts of all political stripes have corroborated the conclusion that tax cuts do not fully pay for their cost to the U.S. Treasury. Both the former Federal Reserve Chairman Alan Greenspan and the current chairman Ben Bernanke have testified to Congress on multiple occasions that tax cuts do not pay for themselves, especially when they are deficit-financed, as almost all of the president's tax cuts have been. Former Chairman Greenspan told Congress in 2004, "Very few economists believe that you can cut taxes and you will get the same amount of revenues. When you cut taxes, you gain some revenue back. We don't know exactly what this is, but it's not small, but it's also not 70 percent or anything like that."

If fact, when tax cuts are deficit-financed, they increase both the deficit and the national debt and could actually have a negative economic impact, lowering the national savings rate, increasing long-term interest rates, and dampening economic activity. Worried economists and analysts watched as the national savings rate plummeted from 1.8 percent throughout 2004 (already a historical low) to *negative 0.5 percent* in the third quarter of last year. Consumers have been propping up the economy by continuing to spend--helped in large part by quickly rising housing prices--yet if consumer behavior shifts and Americans begin saving more, the economy might move toward another recession.

Changes in tax policy of the magnitude of the Bush tax cuts have more impact than simply giving Americans their money back, most particularly with respect to the government's fiscal health. Any claims by the administration or outside sources that tax cuts are able to completely pay for themselves should be immediately rejected. All the evidence shows that any economic benefits of the cuts will not offset the cost to the government, particularly when the cuts add to the national debt and place an increasing burden on the economy. While such claims may serve ideological ends of the president and his supporters', they are political rhetoric far removed from the facts.

House Passes Yet Another "Emergency" War Funding Bill

Before departing for a week-long St. Patrick's Day recess, Congress succeeded in further mangling the fiscal state of the nation. The House passed a costly emergency supplemental bill, while the Senate approved a misguided budget resolution . At the same time, both chambers approved an increase to the nation's debt limit to pay for their fiscal decisions. The $92 billion emergency supplemental measure passed by the House will significantly increase current deficits and do so by circumventing standard budget procedures.

The House measure, approved on March 16 in a 348-71 vote, allows the White House and Congress to sidestep spending caps by passing needed spending under the category of "emergency," when in fact said spending has been anticipated for months. The bill appropriates $91.9 billion in spending for this fiscal year, $67.6 billion of which will be spent on the wars in Iraq and Afghanistan.

When President Bush first sent the supplemental requests to Congress, the funding for war operations and hurricane relief were separate, but the House Appropriations Committee bundled the requests together, much to the chagrin of a number of House deficit hawks. Among the non-war-related spending included in the bill, $4.3 billion was appropriated for foreign aid

and $19.2 billion for hurricane relief in the Gulf Coast. The bill also allows for $750 million to be shifted for Fiscal year 2006 low-income heating assistance programs, an important but somewhat tardy gesture.

Part of the hurricane package also includes $4.2 billion for housing in the form of Community Development Block Grants (CDBG). This funding for CDBG is a perfect example of the use of questionable budgetary practices by this Congress and administration, in order to fund important programs. The President's Fiscal year 2007 budget proposes $1 billion in cuts to the CDBG program (from $4 billion last year to $3 billion for FY07). As *Nation's Cities Weekly* recently pointed out, the proposal would mark the lowest level of funding for the program since 1990. Yet the White House and Congress are now appropriating CDBG funding through the emergency supplemental process. Not only does it make them less accountable to deficit-control measures, but it also sets up a "robbing Peter to pay Paul" situation, giving a false picture of how much funding is actually appropriated for CDBG.

Notably, a number of House conservatives revolted against certain aspects of the bill, specifically those regarding spending on hurricane relief. Twenty-nine members, mostly from the conservative Republican Study Committee (RSC), broke with their party and voted against a rule to consider the supplemental because they were upset at the lack of offsets to the spending. Despite the efforts of RSC members Mike Pence (R-IN) and Jeb Hensarling (R-TX), the rule passed 218-200. An amendment by Hensarling and Rep. John Shadegg (R-AZ) to provide offsets for hurricane spending was found by the Rules Committee to be out of order. However, House Republicans did reject an amendment to add an additional $1.9 billion to the bill to help with the post-hurricane housing crisis in a 212-210 vote. An amendment that would have put $825 million toward improved port security also failed.

The Senate has yet to mark up its version of the emergency spending bill, and is not expected to do so until sometime in April. It is unclear if the Senate will attempt to include any offsets for non-defense spending in its version.

Honest Debate Is Needed Around Vote to Increase Debt Limit

On March 16 the Senate voted 52-48 to increase the nation's statutory debt limit once again. The limit now sits at almost $9 trillion. The vote to increase the debt limit was necessary in order to avoid a government default, yet Senate Republican leaders pushed hard for this vote to take place without proper debate and without giving Senators a chance to offer amendments, some of which could potentially help to slow the rapid run-up of debt in years to come.

The following statement by Adam Hughes, OMB Watch Budget Policy Director, was released in response to the Senate vote to increase the national debt ceiling on March 16, 2006:

Today the Senate voted 52-48 to increase the nation's statutory debt limit once again. The limit now sits at almost $9 trillion. The vote to increase the debt limit was necessary in order to avoid a government default, yet Senate Republican leaders pushed hard for this vote to take place without proper debate and without giving Senators a chance to offer amendments, some of which could potentially help to slow the rapid run-up of debt in years to come.

This increase marks the fourth time Congress has needed to increase the debt limit in the five years since President Bush took office, ushering in a debt that has ballooned by more than 51 percent over that time. The vote highlights the abysmal record for both the President and Congress. At the start of the Bush administration - when the national debt was $5.95 trillion and large surpluses were projected for the government - Bush told Congress and America we could

afford both tremendous tax cuts and paying down the debt. This turned out not to be true and the days of surpluses are long gone. Instead of dreaming of all we could provide and invest in for our country, we are confronted with mountains of debt and are continually let down by our leaders in Congress who are more concerned managing the political fallout of raising the debt ceiling again than actually debating how to fix the problem.

The need to increase the debt limit yet again is a direct result of the fiscal policies and practices implemented by Bush and Congress over the past five years. While the administration blames the increase in U.S. debt on both the 2001 recession and the costs of the war on terrorism, in reality the cost of his 2001 and 2003 tax cuts, ringing in at $225 billion in 2005 alone, carry far more of the blame for the burgeoning rise in national debt.

Democrats demanded as much as eight hours of debate and up to three separate amendments to the debt limit legislation, but Senate GOP leaders preferred to try to ignore the problem and avoid a much-needed public discussion on the causes and solutions to our current and growing debt troubles. In the end only one amendment was considered (and rejected), which sought a Treasury Department study on foreign investment in the United States.

Frist blocked Democrat attempts to offer another amendment on pay-as-you-go rules (PAYGO) that would have been an excellent first step toward stemming the irresponsible fiscal policies of this Congress and president. In the last few months, the PAYGO amendment has been offered often by Democrats, twice last fall and once this week. All three times it has been rejected by razor thin margins, with all but a handful of Republicans voting against it, leading many to question if the GOP has abandoned its fiscally conservative roots. Clearly, far too many Republican Senators felt fine burdening future generations with hundreds of billions of dollars of new debt every year, dampening future economic prospects for the country and seriously threatening our national economic security.

Unfortunately, Republican leaders were once again unwilling to take even the smallest step to redirect the nation's course toward sound and sustainable fiscal policy. And while the GOP is turning a blind eye, they continue plodding through their annual budgetary work, seemingly oblivious to the results of their actions. Nothing illustrates this more plainly than tomorrow's possible adoption of the FY 2007 budget that will add additional hundreds of billions of dollar to the government's debt next year.

If lawmakers continue to enact budget and tax legislation in the same irresponsible and reckless fashion that has marked the last five years, the debt will continue to explode. Even without factoring in the cost of the Iraq war and annual fixes to the Alternative Minimum Tax, the total national debt under current policy is expected to reach $11.5 trillion at the end of 2011, or twice that of the debt inherited by Bush when he took office.

Allowing this level of national debt to accumulate is both unfair and irresponsible. Every single U.S. citizen now carries $28,000 of national debt burden, and this number will dramatically increase unless Congress makes some real changes to current fiscal policies. At a minimum, Senators and Representatives should being having real conversations and debate about what is wrong with current budget and tax policies and how to fix them.

House Bill to Roll Back Food Safety

The "National Uniformity for Food Act" (H.R. 4167) that would preempt nearly 200 food safety laws and affect state law in all 50 states, passed out of the House on March 8, to ire of consumer advocates. The legislation was introduced by Reps. Mike Rogers (R-MI) and Ed Towns (D-NY).

The bill, being pitched as a measure to create a uniform set of federal food regulations, would in fact severely limit states' authority to develop safety standards and require warning labels that are not identical to those developed by the U.S. Food and Drug Administration (FDA).

According to the State Association of Food and Drug Officials, a group strongly opposed to the legislation, "H.R. 4167 effectively eliminates our nation's biosecurity shield, and will undermine our whole food safety and biosurveillance capability by undermining states' authority to assure food safety."

Consumer groups maintain that, over the years states have carefully developed food safety laws to fill gaps by FDA regulations. H.R. 4167 would sweep aside those improvements and leave consumers in many states at greater risk. While the bill includes a petition process through which states could seek an exemption to address food safety issues unique to their area, critics assert that such a process would create unnecessary, and even dangerous, delays in addressing food safety issues.

For example, states are beginning to address consumer right-to-know provisions, such as the labeling of genetically engineered foods and foods that undergo irradiation. The proposals in H.R. 4167 would have a chilling effect on these and other state efforts aimed at giving consumers informed choices. The legislation could also gut California's Proposition 65, which requires warning labels for products or food that expose consumers to chemicals that are known to cause cancer or birth defects.

Large food manufacturers that have long complained of overly stringent state-level food safety programs, support the legislation, claiming that the current patchwork of federal and state regulations results in increased costs and confusion for both food companies and consumers.

Similar legislation has yet to be introduced in the Senate.

Louisville Air Quality Program Threatened

Kentucky state lawmakers are considering a bill that would threaten the future of a fledgling air pollution program in Louisville. The program, called the Strategic Toxic Air Reduction (STAR) program, was passed unanimously by the Louisville Air Pollution Control Board in June 2005, and requires industrial facilities in the area to reduce emissions of 18 hazardous air pollutants.

The STAR program came out of pressure from citizens to reduce the area's high levels of hazardous air pollutants. In 2002, the U.S. Environmental Protection Agency (EPA) ranked Jefferson County, where Louisville is located, as the locale with the greatest health risks from hazardous air pollutants in the Southeast. EPA air monitors found levels of the 18 hazardous air pollutants now covered by the STAR program in excess of federal air quality standards.

But now Louisville's very ability to control local air quality is at risk. Earlier this month, Kentucky Sen. Dan Seum (R), who represents Jefferson County, introduced SB 39 that would have killed the STAR program by prohibiting any locality from adopting regulations more stringent than state or federal regulations. Seum argued that the STAR program would cost Kentucky jobs.

On Feb. 27 the Kentucky state senate passed an amended version of SB 39, which dropped the local preemption provision, but included a requirement that a three-fifths supermajority of the Louisville Metro Council approve the STAR program before the program could take effect. The bill, which had Seum's support and passed the state senate 27-10, had been sent to the state

house.

The Kentucky House of Representatives, however, passed a major re-write of SB 39, March 14, that requires the Louisville Air Pollution Control Board to submit a cost/benefit analysis of the STAR program to the Louisville Metro Council by Nov. 30. The council would then have one month to submit "recommendations for modifications." The House bill, which passed 95-1, leaves the STAR program temporarily intact, but still creates the possibility that the program could be weakened.

The disparate House and Senate bills now head to a conference committee, where lawmakers will attempt to work out the differences.

Local environmental organizations, like Rubbertown Emergency Action (REACT) see the STAR program as an important step towards cleaner air and a healthier environment in Louisville. REACT member Eboni Cochrane explains, "The problem is there are only minimum standards at the federal level and they don't protect us from chemicals coming from the facilities located in Rubbertown."

STAR also demonstrates the importance of monitoring data and government-held toxic release data, to diagnosis environmental problems. According to Tim Duncan, also with REACT, "Without the air monitoring, and citizen access to that data, industries could have kept saying there is not a problem, and we would not have been able to push the city to deal with the industrial sources of our air pollution problems."

Spotlight on Secrecy and Overclassification

Testifying before the House Subcommittee on National Security, Emerging Threats and International Relations, representatives from the National Archives, the Department of Defense (DOD) and the Department of Energy (DOE) received harsh questions regarding a secretive, multi-agency reclassification program, as well as unclear sensitive but unclassified (SBU) policies.

As reported in the previous *Watcher*, the National Archives recently placed a moratorium on the reclassification program first reported by *The New York Times*. The program is believed to involve at least six federal agencies and the reclassification of some 55,000 pages of documents since 1999.

During the March 14 subcommittee hearing, representatives focused much of their questioning of National Archives officials on a classified Memorandum of Understanding (MOU) issued by a "branch" of the Defense Department that may offer the only documented details on the reclassification program's scope and procedures. Testifying for the Archives were Professor Allen Weinstein, Archivist of the United States, and J. William Leonard, Director of the National Archives Information Security Oversight Office (ISOO)

Rep. Henry Waxman (D-CA) repeatedly pressed Weinstein for details about the memorandum. Weinstein responded that he "can't talk about what the MOU says" because the program is classified. Pressed about the program's classified status, he said he did not "know why it is classified" and offered to talk about the MOU in a closed briefing.

Believing that the secrecy surrounding the document and the program cuts to the heart of the reclassification program's problems, Rep. Christopher Shays (D-CT), chairman of the subcommittee, indicated he will request that the Defense Department declassify the memo.

Weinstein said that he "wasn't aware of the [reclassification] program" until he "learned about it in *The New York Times*." Weinstein and Leonard stated that they are in the midst of reforming the program to prevent the reclassification of innocuous documents. Within 60 days, the Archives plans to complete its audit and issue a thorough analysis of the declassification program and offer recommendations on how it should be reformed.

The hearing also addressed what Shays calls "faux secrets," sensitive but unclassified information (SBU) that the federal government keeps from the public. Davi M. D'Agostino of the U.S. Government Accountability Office (GAO) explained the findings of the GAO's recent report, "Managing Sensitive Information." The report focuses on how the Energy and Defense Departments use Official Use Only (OUO) and For Official Use Only (FOUO) designations. GAO found that the agencies lack clear policies, oversight, and training on handling sensitive information.

Echoing the findings of the GAO report, Tom Blanton of the National Security Archive at George Washington University testified, "Nobody knows the scope of SBU." According to a recent report by the National Security Archive, 28 distinct policies on SBU exist throughout the federal agencies. In September 2005, OpenTheGovernment.org's Secrecy Report Card identified 50 "restrictions on unclassified information" that agencies use to keep information secret. Additionally, there are often few limits on who can classify a document as SBU. "Anyone [at DOD] can classify a document as FOUO, subject to a review by their supervisor" according to Robert Rogalski, Acting Deputy Under Secretary of Defense, and as Shays noted, a supervisor may never decide to exercise authority. At DOD alone, 2.5 million employees can mark a document as sensitive but unclassified. "SBU designations are being misused as an unregulated form of 'classification-lite,'" according to Shays. "We are drowning in a sea of our own faux secrets."

Court Rejects Data Quality Act Case Brought by Industry

A recent appeals court decision has dealt a blow to what many consider frivolous challenges to sound science made under the Data Quality Act (DQA). On March 6, the U.S. Court of Appeals for the Fourth Circuit dismissed a lawsuit brought by the Salt Institute and the U.S. Chamber of Commerce under DQA, when judges found that the act does not allow for judicial review and that the plaintiffs had not show injury and thus lacked standing. The suit requested court intervention on a 2003 challenge by the plaintiffs with the National Heart, Lung, and Blood Institute (NHLBI), requesting underlying data on a sodium study the institute had conducted.

The industry associations challenged, in both their 2003 data quality petition and the lawsuit, a grant-funded study which, they claim, "directly states and otherwise suggests that reduced sodium consumption will result in lower blood pressure in all individuals." The Salt Institute, an association of salt manufacturers that advocates on behalf of its members, and the Chamber of Commerce requested the release of raw data that supported the study's findings, accusing the study of not properly accounting for race, age, sex, and other such factors and of therefore violating DQA.

Writing for a panel of judges on the U.S. Court of Appeals for the Fourth Circuit, Judge Michael Luttig--once on the short list of President Bush's Supreme Court nominees--upheld a lower court's ruling, denying the reviewability of the data quality challenge.

The ruling was a definitive statement in the debate over whether DQA enables judicial review. The opinion of the court found the plaintiffs failed to establish "an invasion of a legal right" and thus an injury and concluded that "[t]he judgment of the district court dismissing the case for lack of jurisdiction is affirmed."

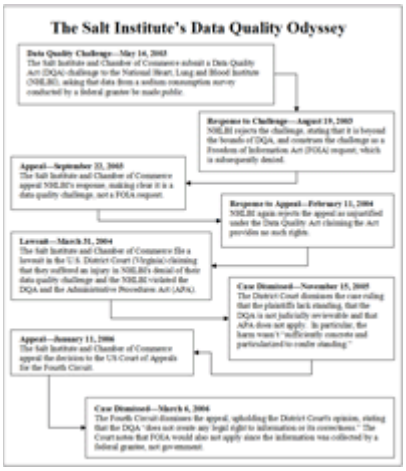

Figure 1: The Salt Institute's Data Quality Odyssey

This case, set up as a test of DQA's authority, has been watched closely by both sides of the DQA debate. The initial challenge with the NHLBI, the division of the National Institute of Health charged with fighting diseases of the heart, blood, and lungs, was rejected under the Freedom of Information Act (FOIA) because the challenge sought only to obtain underlying survey data. The institute rejected the FOIA request because the data was collected by a federal grantee, not the government, and non-governmental entities are generally not subject to FOIA. The Salt Institute and the Chamber of Commerce appealed the agency decision, making clear their challenge was under the Data Quality Act, not FOIA, and alleging that they had suffered harm from the study. Once NHLBI rejected that appeal, the industry associations pursued legal recourse.

Soon after the court decision, talk turned to pursuing other DQA cases in the courts and amending DQA to allow for judicial review. Rep. Candice Miller (R-MI) stated that she will consider introducing legislation to establish judicial review of DQA and may include it in a Paperwork Reduction Act reauthorization bill. The Center for Regulatory Effectiveness appears to be seeking another data quality challenge in the courts, in order to establish a counter precedent where a court finds DQA reviewable.

The Chamber of Commerce and the Salt Institute have three options for moving forward with the case. First, they can petition for a rehearing before the same three-judge panel. Second, they can submit an *en banc* petition, requesting a hearing before the entire Fourth Circuit. Finally, they can petition the Supreme Court to issue a writ of *certiorari*.

Sunshine Week Marked by National Discussion, News Coverage

The public is growing weary and distrustful of burgeoning government secrecy--that's the message brought to the public last week during Sunshine Week (March 12-18th), an effort by the media, civic groups, libraries, universities and others to highlight the importance of open government.

Joining the national efforts begun last year by media groups, OpenTheGovernment.org kicked off Sunshine Week by coordinating with several groups a program of local discussions on open government and secrecy at 47 sites across the country. Highlighting the program, entitled "Are We Safer in the Dark?", was a panel discussion on open government laws and the impact of secrecy on the public's ability to hold government accountable.

Contributing to the discussion was Mark Schleifstein, a reporter with the New Orleans *Times*

Picayune, who described via a pre-recorded interview his failed efforts to get critical safety information to his readers immediately after Hurricane Katrina struck. Moderator Geneva Overholser posed questions to the panel from national audience members.

Newspapers and other media outlets around the country contributed an impressive array of opinion pieces, editorials and news pieces for Sunshine Week (see this Google News search). PBS's NOW produced a special broadcast on government secrecy, looking at the government's failed response to Hurricane Katrina and the problem of overclassifying information.

Honoring Sunshine Week, OpenTheGovernment.org released a short flash video, a fun look at the not-so-funny problem of growing government secrecy.

PRA Hearing Features Industry Anti-Reg Wishlist

Testimony in a House hearing on the Paperwork Reduction Act (PRA) revealed industry groups' intentions of using PRA reauthorization to push an anti-regulatory agenda.

The Paperwork Reduction Act (PRA) establishes the guiding policies for the collection, dissemination and management of government information. Since its inception in 1980, the PRA has had a major impact on regulatory policy, even though it grants the White House no statutory authority to conduct regulatory reviews.

The PRA covers a broad spectrum of information management policy issues, including information dissemination, technology, security, and archiving. The March 8 hearing before the Regulatory Affairs Subcommittee of the House Government Reform Committee, however, focused primarily on the information clearance provisions of the law, which give OMB's Office of Information and Regulatory Affairs (OIRA) the authority to review and approve or disapprove any collection of information from 10 or more people by a federal agency. OIRA and the agencies are also required to work together to establish goals for reducing the total paperwork "burden." Though these provisions attempt to limit agency information collection activities, the total number of burden hours each year continues to rise. According to subcommittee chair Candice Miller (R-MI), the burden has increased 400 percent since the bill's passage in 1980.

Cutting Compliance Time, Not Information

Two witnesses stressed that the topic framed for the hearing -- how to reduce burden hours -- would not be the best way to approach reauthorization of the PRA.

OMB Watch's regulatory policy director Robert Shull argued that information technology has made the collection of information potentially easier and less burdensome than ever, and the PRA should be updated to reflect the new potential of technology to reduce reporting and recordkeeping burden without reducing the quantity, quality, or utility of the information collected. Moreover, according to Shull, the reported increase in burden hours could reflect any number of factors external to agencies -- such as new legislative mandates or more people filling out forms -- rather than gratuitous increases in paperwork. In fact, an increase in information collection is not necessarily a bad thing, Shull testified, given that it could also represent an increase in information *needs* being addressed.

Additionally, Sally Katzen, former administrator for OIRA under President Clinton, pointed out that not all burden should be counted the same way. When an individual receives a benefit from filling out an information request in order to receive a tax break, for instance, the information collection should not be considered a burden. As Katzen pointed out, in choosing to fill out the form for accelerated depreciation for oil and gas depletion allowances, the individual or

company has already determined that the potential reward is worth the information collection burden. Moreover, these kinds of information burdens are actively sought out by industry. "Surely those who spend the hours filling out those forms have made the calculation (however informal) that the burden of doing the paperwork is outweighed (often greatly outweighed) by the benefit of obtaining the resulting tax advantage," according to Katzen.

Katzen also explained that requiring disclosure of information, such as requiring employers to post information about toxic chemicals in the workplace, can often be less costly than seeking regulation. Viewed in this light, even a large information collection burden might actually save the affected parties time and money.

Measuring information burden as an aggregated whole can obscure how and why the information collection is being imposed. Katzen called for a more nuanced approach to evaluating information burden and requested that reauthorization of the PRA resist implementing stringent burden reduction goals.

A Wolf in Sheep's Clothing: Industry's Anti-Regulatory Agenda

While much of the testimony addressed how to relieve information burden without reducing the quality or quantity of needed information collections, some witnesses used the opportunity to push non-germane, anti-regulatory proposals. Representatives from the U.S. Chamber of Commerce and the National Federation of Independent Businesses (NFIB), as well as former OIRA administrator James Miller, suggested "reforms" to the act that could have dangerous consequences for public health and safety provisions.

For instance, while recommending some changes to reduce burden, William Kovacs of the U.S. Chamber of Commerce also recommended codifying OIRA's regulatory review authority under Executive Order 12,866. This move would have little to do with information policy but would greatly increase OIRA's role in agency rulemaking and would legislate the use of cost-benefit analysis. Kovacs also recommended "look-back" studies that would open up the books on existing regulations, even those with proven efficacy.

Both Kovacs and Andrew Langer, Regulatory Policy Manager for the NFIB, recommended increasing OIRA's budget (calling it "full funding" of OIRA), without specifying that the money go to information management policy. Currently, same OIRA desk officer who reviews information collections under the PRA also reviews rulemakings, a role which has not been sanctioned by Congress. This linkage between paperwork and regulatory review began under the Reagan administration when OIRA was created. The PRA created OIRA to implement the law, and the Reagan administration issued an executive order that gave regulatory review powers to OIRA.

Langer also took the opportunity to recommend "regulatory sunsets," which would require all regulations to be periodically reviewed and re-justified in order to continue. Many versions of regulatory sunsets have come up in legislative proposals, but none has ever been enacted at the federal level. In Langer's version, "[a]ny regulation that is not reviewed at that ten-year point would be automatically sunset, and for a regulation to remain in place, its existence would have to be justified."

James Miller, who was the first OIRA administrator and the first to link paperwork and regulatory reviews, applied his reform suggestions for paperwork reduction to the regulatory process throughout his testimony. His ideas included applying controversial net benefits requirements, which seek to maximize the difference between the cost and benefit of a regulation or information collection, rather than optimizing the benefits. Applying this criterion to policy decisions could mean sacrificing the level of protection needed to keep people safe and

healthy.

Miller also derided the congressional mandates that require regulation without consideration of cost. He called for a joint bill on paperwork and regulation that would mandate a regulatory and information collection budget, like the financial budget. According to Miller, under this plan, "[b]urdens pursuant to requirements/rules presently in force would be treated in the same way as entitlements in the financial budget. . . . But new requirements/regulations, as with discretionary spending, would have to be 'appropriated' and could not be promulgated unless they were within the scope of the relevant 'appropriation.'"

OMB Watch's Shull warned that such non-germane proposals would be bad for public health and safety and could derail the reauthorization of the bill.

Beyond Paperwork: Harnessing Technology to Improve Information Management

Because the PRA actually covers the entirety of information management policy, a reauthorization presents an opportunity to address broader issues surrounding government information, according to testimony by Shull.

While OIRA has been focusing on the information collection process, the agency has done much less to enhance information technology, security or dissemination, for instance. In his testimony, Shull referred to several GAO studies showing how OIRA has fallen behind on its information management duties.

Shull also pointed out the way information technology can be used to reduce burden and increase public access to information. Cutting-edge innovations such as nanotechnology can make information collection practically burden-free. Other technologies can make filling out forms faster and easier. Other initiatives already underway can also help relieve the burden on business, such as the Business Gateway, which small business groups urge should be improved to allow small-business owners to enter information about their businesses and receive details of applicable federal regulations.

The 1995 reauthorization of the Paperwork Reduction Act expired in 2001, leaving the PRA without designated appropriations though still enforceable. A bill to reauthorize the PRA has not yet been introduced, but both Reps. Miller and Tom Davis (R-VA), who chairs the House Government Reform Committee, have stated publicly that PRA reauthorization is a high priority for the 109th Congress.

FBI Used Anti-Terrorism Powers to Target Peace Group

The American Civil Liberties Union (ACLU) released documents on March 14, 2006 that document FBI surveillance and investigation of the Thomas Merton Center for Peace & Justice in Pittsburgh, PA, carried out because the group "has been determined to be an organization which is opposed to the United States' war with Iraq." This appears to be the first evidence that the FBI is using the viewpoint and activism of a U.S. nonprofit as a basis for investigation by the local Joint Terrorism Task Force (JTTF).

The documents show that the FBI began investigating the Merton Center in November 2002, noting that the group was distributing leaflets in downtown Pittsburgh. FBI documents also identify the Center as "a left-wing organization advocating, among many political causes, pacifism." A February 2003 memo titled "International Terrorism Matters" describes how the Pittsburgh JTTF reviewed the Merton Center's website to gain information about demonstrations and rallies against the war the group had planned. The memo concludes, "The

above information is for your use and any action deemed appropriate."

According to Merton Center Executive Director Jim Kleissler, the organization's "members were simply offering leaflets to passersby, legally and peacefully, and now they're being investigated by a counter-terrorism unit. Something is seriously wrong in how our government determines who and what constitutes terrorism when peace activists find themselves targeted."

The documents have come to light as the result of Freedom of Information Act requests filed by the ACLU on behalf of more than 150 organizations in 20 states.

Questions Raised About IRS Enforcement Program

Complaints filed by two nonprofits illustrate the potential for abuse inherent in the Internal Revenue Service's (IRS) reliance on referrals from the public for leads in its enforcement programs. On March 14, a complaint filed by Citizens for Responsibility and Ethics in Washington (CREW) against Americans for Tax Reform (ATR) and Americans for Tax Reform Foundation (ATRF), alleged activities that "may violate IRS regulations and require a revocation of their tax-exempt status." The next day ATR filed a counter-complaint with the IRS against CREW, alleging that CREW, a 501(c)(3) organization, engages in prohibited partisan activity because the majority of its ethics complaints have been filed against Republicans.

The two complaints raise questions for the IRS's compliance program, particularly its Political Activity Compliance Initiative, a program of increased and expedited enforcement of the prohibition on intervention in elections by 501(c)(3) organizations. Publicity around the program could lead to a flood of retaliatory and harassment complaints this year unless the IRS develops standards to screen out such abuse of its procedures.

The CREW complaint does not allege partisan activity by ATR (a 501(c)(4) social welfare organization) or ATRF (a 501(c)(3) organization). Instead, it outlines a series of financial transactions, in which ATR and ATRF President and Treasurer Grover Norquist collaborated with convicted lobbyist Jack Abramoff, who represented Indian casinos in Mississippi, in order to engage in activity inconsistent with the organizations' tax-exempt purpose. CREW charges that Norquist allowed "the organizations to be used as a pass-through to funnel money generated by Indian casino gambling to individuals or groups engaged in anti-gambling efforts," in order to conceal the source of funds from the anti-gambling groups that received them. CREW maintains that ATR sent more than $1.15 million to anti-gambling groups, including the Christian Coalition in Alabama and Citizens Against Legalized Lottery. These groups, in turn, hired Century Strategies Inc., conservative Ralph Reed's firm, to conduct an anti-gambling campaign. It is unclear how much control the groups had over the funds. A representative of one recipient, the Faith and Family Alliance, told the *Atlanta Journal Constitution* that he had instructions to send the funds to Reed, saying, "I was operating as a shell."

CREW alleges that this activity was inconsistent with ATR's purpose of reducing the size of government and lowering taxes. By charging a fee to pass through the funds, CREW says ATR engaged in a commercial activity that benefited a private party (the Indian casinos wishing to prevent competition). The complaint asks the IRS to "conduct a full-scale investigation, including a forensic audit of the funds that were funneled through ATR" to determine if these activities are at odds with its tax-exempt status. The IRS would also have to determine whether these activities were incidental or constituted a substantial portion of ATR's activities.

The complaint does not address whether the funds were ultimately spent for a lobbying purpose- opposing casino gambling. CREW also asks the IRS to impose unrelated business income taxes on the fees charged for handling the funds and to impose sanctions on ATR for failure to publicly disclose its application for exempt status as required by Section 6104 of the

tax code.

The ATR complaint against CREW was reported in the press, but is not posted on the ATR website. According to press reports, ATR charges that the vast majority of CREW's ethics complaints have been filed against Republicans. For example, its 2005 list of the 13 Most Corrupt in Congress included 11 Republicans and two Democrats. Melanie Sloan, director of CREW, responded, "Republicans are the ones in power. You're stupid to pay off a Democrat. They can't do a whole lot for you." She also noted other instances where CREW has filed complaints against Democrats.

Whether CREW's activity will be treated as partisan intervention in elections is unclear. While ATR points out that Sloan worked for Democratic members of Congress prior to coming to CREW, and other staff members have worked for liberal groups, it would appear more would be needed to prove intervention. Miriam Galston, associate professor at George Washington University School of Law, told *The Hill*, "Filing those complaints would not constitute, taken by themselves, intervening in a political campaign. If they went further and publicized the list and publicly tried to make some political mileage out of fact of the allegation and tried to sully campaign prospects using their own complaints, they could be said to be intervening in a political campaign."

Lobby Reform: A Bill in the House, While the Senate Moves Toward Vote

Heading into the week long St. Patrick's Day recess, the House Republican leadership has formally introduced a lobbying and ethics reform bill, while the Senate has scheduled a vote for March 27. While both chambers are finally moving legislation, it is increasingly unclear what new rules will eventually be enacted, and whether they will change business as usual in Washington.

Legislation in House

The House GOP proposal on lobbying and ethics reform has been under discussion for months, with Rules Committee Chairman David Dreier (R-CA) taking the lead. On March 16, Dreier introduced H.R. 4975, the Lobbying Accountability and Transparency Act, as a single comprehensive bill. Reportedly, the bill will be divided into pieces and parceled out to six different committees, Dreier's Rules Committee; Judiciary; Ways and Means; House Administration; Government Reform; and Ethics. The legislation currently focuses on:< p>

- **Disclosure by Lobbyists**: The trigger for registering would change from $24,500 in a 6-month period to $10,000 in a 3-month period. The bill also requires quarterly, electronic reporting by registered lobbyists, including disclosure of campaign contributions, gifts, and lobbyists' past congressional and executive branch employment, but does not include disclosure of expenditures for grassroots lobbying or coalitions;
- **Privately Funded Travel**: Privately funded travel would be banned for the remainder of the 109th Congress, and the Committee on Standards of Official Conduct would have to recommend new rules by Dec. 15;
- **Revolving Door**: While the one-year waiting period for members and senior staff before they could become lobbyists would be retained, legislators would be required to inform the ethics committee of any job negotiations that could be a conflict of interest, and refrain from voting on any matter that creates the appearance of a conflict of interest;
- **Earmarks**: The bill would require the identification of sponsors of earmarks in an appropriations bill, and appropriations conference reports would have to specify

earmarks that originated in conference, but there would be no simple method of challenging earmarks;
- **Oversight**: The bill would create an auditing authority for the House Inspector General to do spot audits on lobby disclosure forms;
- **527 Organizations**: Finally, the bill would apply Federal Election Campaign Act (FECA) restrictions to independent 527 organizations so that they can no longer raise unlimited amounts of money, and eliminate restrictions on party-coordinated expenditures.

House Majority Leader John Boehner (R-OH) has said the bill will be taken up after recess. As rank-and-file members groused about some of the provisions, however, Majority Whip Roy Blount (R-MO) suggested the members take the legislation home over the in-district work period and return with suggested alterations. Consequently, the bill could change substantially before leadership brings it to the floor.

Both members and some organizations are focusing most of their complaints on the provision that would ban - albeit temporarily - lawmakers' travel paid by private interests. According to United Jewish Communities Vice President for Public Policy William Daroff, "There is widespread, bipartisan consensus that a travel ban and a travel moratorium are not in the best interest of Congress and are not in the best interest of public policy."

Senate Moves Forward

In the Senate, debate on S. 2349 resumes on March 27 and a vote is expected that evening. An amendment introduced by Sen. Charles Schumer (D-NY), dealing with the Dubai Port World deal, is expected to be withdrawn. However, it is still unclear how the large number of amendments still pending will be dealt with. Sen. Majority Leader Bill Frist (R-TN) has said that he expects to spend only a limited amount of time on the legislation so that the Senate can move on to immigration reform on March 28.

While leadership may spend the week convincing members to set aside their non-germane amendments (an amendment that would add new and different subject matter to a bill it seeks to amend), a few amendments will likely remain to be dealt with. A controversial proposal to institute an independent ethics and disclosure enforcement office, introduced by Sen. Joe Lieberman (D-CT), is a pared-down version of his previous provision rejected by the Homeland Security and Governmental Affairs Committee. His newest proposal would not give authority to the office to conduct ethics investigations of members, a sticking point in committee.

Also unclear is whether the Senate will consider an amendment introduced by Sen. Robert Bennett (R-UT) to strike the disclosure of expenditures of grassroots lobbying by registered lobbyists. In light of opposition from many organizations, the fate of grassroots lobbying disclosure is uncertain. In addition, while the entire legislation affects the nonprofit community by helping to offset the role money has in influencing public policy, amendments filed by Sen. Tom Coburn (R-OK) and Sen. James Inhofe (R-OK) could impact charities and their federal funds. Coburn's amendment, co-sponsored by Sen. Barack Obama (D-IL), would require recipients of federal funds, if they are currently filing under the Lobby Disclosure Act (LDA), to disclose the following when they report:

- the costs and a description of any lobbying activities engaged in
- the name of any currently registered lobbyists that was paid money to lobby for federal funding
- the amount of money paid to the lobbyist.

Federal funds are described in the amendment as an "award, grant or loan".

Inhofe's amendment adds a penalty clause to Sec. 18 of the LDA, which prohibits 501(c)(4) organizations that engages in lobbying activities from applying for federal funds. The amendment adds a provision that, if a 501(c) organization engages in lobbying activities with federal funds, an officer of the organization can be imprisoned for not more than 5 years and fined.

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House Budget Committee Approves Budget Resolution

Last Wednesday, the House Budget Committee approved a stark budget resolution that would increase deficits by $254 billion over the next five years, setting the stage for contentious debate this week on the House floor. The resolution sets discretionary spending at meager levels, includes a large increase in defense spending, and assumes continuation of some tax cuts. Its final approval will be the first major test of the new House GOP leadership team, especially of new House Majority Leader John Boehner (R-OH).

Budget Committee Chairman Jim Nussle (R-IA) set the discretionary spending level at the president's request of $873 billion, a 3.6 percent increase from FY 2006 levels. The entirety of that increase will go to the defense department, however, which would receive a whopping 7 percent increase on top of funding approved for the war in Iraq. All other spending would be held flat, inflicting $10.3 billion in harsh cuts in FY 2007 on a wide range of programs and departments after adjusting for inflation. The resolution would cut $167 billion over five years for domestic discretionary spending outside of defense.

The resolution also includes very small cuts to entitlement programs - $6.8 billion spread across 8 different committees. The largest portion, $4 billion, was given to the Ways and Means committee, but very few details have been released about how those cuts would be made or which programs they would affect. It appears additional cuts to the major healthcare programs and student loans - a signature feature of last year's budget - were not included. Finally, the resolution assumes $226 billion in tax cuts over the five-year budget window, including $38.9

billion in FY 2007.

The Budget Committee approved the resolution by a 22 - 17 vote after dispatching a number of Democratic amendments. The senior Democrat on the Budget Committee, John Spratt (D-SC), also offered an amendment to re-instate traditional pay-as-you-go (PAYGO) rules - a sound budget enforcement mechanism that has been proven to force Congress to enact responsible budgets and significantly reduce deficits. Republicans on the committee again choose the path of fiscal recklessness by killing PAYGO rules .

Among the defeated amendments were proposals to increase discretionary spending in a variety of areas, such as port security, education, health care, job training, community services, environmental protection, first responders, and the National Guard.

The bill moves to the House floor this week in what is sure to be a grueling and divisive debate. A handful of moderate Republicans plan to offer a few similar amendments on the House floor this week to those offered by Democrats in committee, and they may find more success. Before the committee markup last week, 23 moderate Republicans sent a letter to Speaker Dennis Hastert (R-IL) meekly calling for more funding for education, health care, housing, and other key urban programs. Majority Leader John Boehner (R-OH) has stated he believes there are ways to address concerns from moderates in his caucus, but said he will not increase the discretionary spending limit.

The House leadership--particularly Boehner, who is presiding over his first budget--is under considerable pressure not only to find a way to convince caucus moderates to vote for the resolution - thereby ensuring its passage--but to do it this week before Congress breaks for a two-week recess. Complicating this situation are warnings from conservatives in the House not to take their support for granted. During debate over the emergency supplemental bill last week, 29 conservative Republicans voted against the GOP leadership in protest because they were upset at the lack of offsets to spending in the bill. The GOP had to rely on the Democrats to get the bill passed.

In attempts to appease those conservatives, the GOP leadership has held meetings with the conservative House Republican Study Committee and made public calls for budget process reforms, including the president's line-tem veto proposal, earmark reforms, and future consideration of more radical changes, such as biennial budgeting and sunset commissions. It is unclear, however, if such promises will be enough to hold conservatives in the face of increased discretionary spending.

Regardless of the success or failure of moderate Republicans (and Democrats) to improve the budget resolution approved by the Budget Committee last week, the end result will be a budget that sets the wrong priorities and further erodes what little fiscal security America has left. Because of this reality, it is more important than ever for Congress to hear calls to reject this budget. Take action today!

TAKE ACTION
Tell Congress to Reject An Irresponsible Budget
Send an email to your Representative and Senators telling them you disagree with the misplaced priorities in this budget. Tell them not to cut vital services and programs to make room for more tax cuts for the wealthy. Send an email today!

2005 Tax Reconciliation Conference Remains Stalled

More than four months after it was initially approved, the FY 2006 tax reconciliation bill remains in seemingly deadlocked negotiations. With conferees continuing to postpone a compromise package due to uncertainty over its final approval in both chambers, the pending

approval of the FY 2007 budget resolution - and an end to the tax bill's filibuster-proof status - looms large.

The tax reconciliation bill is protected from filibuster for up to $70 billion in tax cuts over the next five years, but neither chamber approved that much in their original versions. The Senate version contained a net of $60.2 billion in cuts, half of which was used by a one-year extension of a patch to the Alternative Minimum Tax (AMT).

The House passed $56 billion in cuts, with the major item being a two-year extension of capital gains and dividend cuts. The House bill does not include the AMT patch.

Despite holding conference committee meetings and extended negotiation sessions among the GOP conferees, there has been no breakthrough. House conferees still insist on including capital gains and dividend extensions, while their Senate counterparts seem unwilling to give up the AMT patch.

It even appears conferees and their staffs are getting desperate to find a solution amenable to all parties using misleading budget gimmicks. Conferees are rumored to be considering lifting the income limits on conversions of traditional Individual Retirement Accounts (IRAs) to Roth IRAs, in order to circumvent a Senate budget enforcement rule prohibiting increasing the deficit outside the budget window, a result of the two-year extension of capital gain and dividend tax cuts. This was quickly criticized by a number of budget watchdog groups.

Capital gains and dividend extension language was removed from the Senate version in the Finance Committee, because it was opposed by all Democrats, as well as Republican Sen. Olympia Snowe (R-ME). It's unclear whether sufficient votes can be garnered in the Senate to pass the tax cut bill with capital gains and dividends included, regardless of inclusion of the AMT patch.

With an upcoming two-week congressional recess, it is unlikely the tax cut bill will pass before May. If Congress cannot pass the bill before the FY 2007 budget resolution is approved, the tax bill will lose its filibuster protection, and any hope the GOP has of extending the capital gains and dividend tax cuts will be lost for this year.

Harmful Budget Process Plans Could Become Reality

As Congress's work crafting the FY 2007 budget moves forward, Capitol Hill has been abuzz with talk of significantly changing the annual budget process. In the aftermath of the lobbying and ethics scandals of 2005, this year may prove an opportune moment for conservatives to enact damaging budget process changes that would entrench poor policy development mechanisms and alter the balance of power in the federal government.

Enhanced Rescission Masquerades as Line-Item Veto

The proposal most likely to be tackled by Congress this year is the president's scheme to institute an "enhanced rescission" power in the executive branch. The Line-Item Veto Act of 2006 goes far beyond allowing the president to strike individual wasteful earmarks from appropriations bills, fundamentally shifting power over the revenues of the country from Congress to the president.

Under the president's proposal, the executive branch:
- could use the enhanced rescission power to make changes to funding or legislative language for any discretionary or mandatory program;
- would be able to package cuts to popular services and programs with controversial, high-profile pork spending, forcing difficult votes for Congress who would have to approve or reject the president's package without amendment; and

- could delay or cancel funding *even if Congress votes to overturn the president's vetoes*.

The legislation would give the president unprecedented power to manipulate Congress, allowing the White House to threaten or override many tenuous compromises, both for funding levels for, and policy changes to, federal programs. The president would also be able to use the threat of a line-item veto to pressure lawmakers to support administration priorities on specific and unrelated votes, putting members of Congress at the mercy of the whims of the executive branch.

Not only are these proposals dangerous, they're completely unnecessary. The president already has the power to delay or cancel funding under the Impoundment and Control Act of 1974 and can use the regular veto power of the president to rebuke an overspending Congress. Despite having these powers, President Bush has yet to veto a single piece of legislation and, even more incredibly, has yet to prepare and request of Congress **one, single rescission** as president. He is the first president since the law was enacted not to use this power of the office.

Biennial Budgeting

Also emerging from the depths of budget process reform lore is a proposal for biennial budgeting. The idea that Congress should approve a two-year budget every other year has been thrown around Washington for ages and has been reviewed, studied, debated, and largely rejected many times before.

Supporters believe there simply is not enough time in the year for Congress to construct, debate, and approve a budget, adhere to statutory and internal deadlines, and also conduct rigorous oversight of federal programs. They also believe, but do not advertise, that biennial budgeting will likely severely reduce funding in the second year of each budget with routine inflationary adjustments both underestimated and strongly opposed by fiscal conservatives.

While recent experience indicates Congress has been horrendously bad at enacting the budget on time each year (in 2002, in a result more common than not, not one appropriations bill was completed on time), there is no reason to believe having a budget every other year would expedite the process. More likely the outcome would be much more intense and divisive debate, making compromise and consensus and ultimately approval of a budget all the more difficult.

In addition, biennial budgeting would hamper Congress' flexibility to adapt to changing funding priorities and unexpected shifts in the country's spending needs. This would necessitate a tremendous increase in reliance on "emergency spending" bills that lack sufficient fiscal management mechanisms or accountability standards, making still more difficult Congress' work to manage the nation's finances.

Instead of this reckless budget process change, Congress should consider changing its schedule. The 2006 legislative calendar boasts the fewest working days for Congress in over twenty years, just 125 counting Mondays and Fridays when no votes are held. If members of Congress were in Washington and working anywhere near a typical work week, perhaps they would find it possible to complete the budget on time and conduct proper oversight of government resources.

Sunset Commissions

Another staple Bush administration proposal, sunset commissions, has recently crept its way into the budget process reform debate. Sunset commission proposals have been included annually in the president's budget request; the administration sent a legislative proposal last summer to Congress to institute the commissions; and several other bills in Congress would also implement them. But until this year the proposals had failed to gain even marginal attention.

These proposals would force federal programs to plead for their lives every 10 years before a standing body of officials appointed by the president. Such a system seriously threatens federal government programs of all stripes, particularly social safety net programs and public interest

projects across the government.

Read more about the perils and pitfalls of current sunset commissions proposals from the Regulatory Policy Program at OMB Watch.

Seeking Program Sunsets, GOP Sees Opportunity in Budget Process Reform

Press reports indicate that House conservatives are pushing for budget process reform changes as a condition of securing their votes on the upcoming House budget resolution, and their demands include a controversial proposal for a program sunset commission.

The House GOP leadership may give serious consideration to such a proposal in order to pass a budget resolution this year.

In attempts to appease conservatives concerned that the budget resolution that passed the House Budget Committee last Wednesday does not go far enough, the GOP leadership met with the conservative House Republican Study Committee (RSC) last week and made public calls for budget process reforms, including the president's line-tem veto proposal, earmark reforms, and consideration of more radical changes, such as biennial budgeting and sunset commissions. It is unclear if these promises will be enough to hold conservatives in the face of increased discretionary spending. The House plans to vote on the budget resolution at the end of this week.

The sunset commission idea, which in the past has cropped up as stand-alone legislation and as a proposal in the White House budget, would force government programs to plead for their lives every ten years or face elimination. Programs up for review would have to submit a report justifying their continued existence. Congress would then have to affirmatively vote to keep the program, or it would be automatically eliminated.

The RSC has named the sunset commission proposal as a top priority for budget process reform. According to *Congress Daily* (subscription-only), the RSC has asked House leadership for a "date certain" for debate of sunset commissions, though such a debate has yet to be scheduled and the prospects of budget process reform passing are still unknown.

If the sunset commission proposal were to go through, it could be devastating for public protections, by tying up ever-diminishing agency resources in defending their own existence rather than fulfilling congressional mandates to protect public health, safety, the environment and civil rights. Moreover, Congress already has the authority to restructure government programs and agencies when it determines the need to do so. Congress creates the agencies by statute in the first instance, and it revisits their effectiveness and continued existence each year through the budget process. The White House's proposal would usurp power from Congress by entrusting unelected commissions with important decisions about the structure and function of all government services.

Several bills to implement sunset commissions have been introduced in this Congress, but only one has so far been the subject of a hearing. No bill has been marked up or reported out of committee.

IRS Political Audit Program Heats Up

The fall campaigns may seem far away, but the Internal Revenue Service (IRS) program to enforce the ban on partisan activity by charities and religious organizations has already kicked

into overdrive, with big cases left over from 2004 and new complaints being filed. On March 22, a complaint filed against the Pennsylvania Pastors Network (PPN) alleged a recent get-out-the-vote training improperly featured Sen. Rick Santorum (R-PA), without inviting his opponent for re-election. The following week an attorney for two groups with audits still pending from 2004, the National Associations for the Advancement of Colored People (NAACP) and All Saints Episcopal Church of Pasadena, CA, took action to force resolution of their cases. Law bars the IRS from commenting on individual cases.

A recent *New York Times* report described a March 6 get-out-the-vote training held in Valley Forge, PA, sponsored by the PPN, a coalition of four conservative organizations. The group's purpose is "to help educate the church regarding the key social and cultural issues of the day." The training agenda included speakers on a variety of church issue advocacy efforts and Santorum, who is running in Pennsylvania for re-election to the U.S. Senate this year. Bob Casey, his Democratic opponent, was not present or listed as an invited speaker.

Santorum spoke to the 125 participants in a seven-minute video presentation, urging pastors to be vocal on a proposed constitutional ban on same-sex marriage. PPN then gave out copies of Santorum's new book, *It Takes a Family*, which master of ceremonies Colin Hanna praised. One of the speakers, Rev. Frank Pavone of Priests for Life, stressed that control of the Senate is important when Supreme Court vacancies occur, and "this particular president needs the kind of support that he has today but might not necessarily have after 2006." A few days later, PPN announced that it will hire 10 full-time organizers to help churches get out the vote this year.

PPN is comprised of two 501(c)(3) organizations (the Pennsylvania Family Institute and the Urban Family Council) and two 501(c)(4) organizations (Let Freedom Ring and the Pro-Life Federation). Groups exempt under Section 501(c)(3) of the tax code are prohibited from engaging in partisan activities, directly or indirectly. The 501(c)(4) groups can endorse candidates, but a joint effort that includes the 501(c)(3)s must be nonpartisan. The *Times* article noted that the event "could define the boundaries for churches and other groups." The situation is complicated, since work on ballot initiatives is considered lobbying and is permissible for 501(c)(3) organizations.

The training was recorded by a member of Americans United for Separation of Church and State (AU), which gave the tape to the *Times*. On March 21, AU issued a statement, calling the training an "under-the-radar" drive to support Santorum. On March 22, Citizens for Responsibility and Ethics in Washington (CREW) filed a complaint against PPN, asking the IRS for an investigation and saying PPN "may be engaged in prohibited electioneering by openly endorsing candidates for public office." The complaint noted that the IRS 2004 compliance program found that nine organizations gave "improperly preferential treatment to certain candidates by permitting them to speak at functions." A recent IRS Fact Sheet states that when public officials who are also running for office make appearances at organizational events, the group must "maintain[s] a nonpartisan atmosphere on the premises or at the event where the candidate is present." The IRS will have to determine if the facts and circumstances of the PPN training pass this test.

Colin Hanna, president of Let Freedom Ring, released a statement, March 23, calling CREW's complaint groundless and predicting that it will be dismissed. A 2004 complaint against Let Freedom Ring, filed by CREW, was dismissed. Hanna said PPN is a project of Let Freedom Ring, which is 501(c)(4) organization, but the invitation to the event listed all four coalition members as sponsors. He also said "all costs and expenses of putting on the Pastors Convocation were paid by Let Freedom Ring," and accused CREW of being a "partisan front group."

NAACP and All Saints Church Seek Resolution of 2004 Cases

In related news, the IRS still has cases pending from the 2004 election. On March 29, the NAACP issued a press release, announcing steps it has taken to force the case into court if the IRS does not close it favorably within six months. In January 2005, the IRS asked the NAACP

for documents as part of its examination of a 2004 speech by Chairman Julian Bond that criticized Bush administration policies on education, the economy and the war in Iraq. The NAACP refused to turn over the documents, because it said the timing of the audit (before the end of the tax year) was improper and the action was politically motivated.

At that point the case became a stalemate. In the release, NAACP General Counsel Dennis Hayes said, "Although the IRS has not contacted us in over a year, the agency recently released guidance confirming that the agency continues to believe that it can investigate charities for criticizing governmental policies. The chilling effect of the IRS actions is profound, and the NAACP cannot stand by and allow our constitutional freedoms to be eroded." NAACP President Bruce Gordon noted that the IRS is "dragging its feet" on Freedom of Information Act requests, and "it seems that the government's strategy is to delay and withhold information in the hope that we'll concede. Well, the NAACP doesn't give up so easily."

To force a resolution the NAACP has paid what it estimates it would owe if the IRS found it has violated the ban on partisan activity. The excise tax rate is 10 percent of the cost of a prohibited communication. In this case the NAACP estimated it spent $176.48 to disseminate Bond's speech, so it sent the IRS $17.65. Hayes said this in no way represents an admission of wrongdoing. Instead, the NAACP has filed for a refund of the $17.65. If they do not receive the refund within six months, they will go to court for a review of their claim.

All Saints Episcopal church, another group being audited for anti-war statements during the 2004 election, wrote the IRS on March 29 asking if it was still being investigated. All Souls received a letter from the IRS notifying it of the investigation in September 2005, and a follow-up letter the next month. Church officials have not heard from the IRS since that time, although the October IRS letter said a document information request would be coming.

All Souls attorney Marcus Owens, of Caplan and Drysdale in Washington, D.C., told *BNA* that a memo from the IRS chief counsel indicates that the procedure used by the IRS to initiate the case was improper. Owens said, "The church is anxious to receive some indications from the IRS regarding the direction the case is taking." If the case does proceed, All Souls wants the IRS to reconsider the threshold for initiating investigations, which whether a "reasonable belief" that a violation has occurred.

FEC Opens Door To Rulemaking on Grassroots Lobbying

The Federal Election Commission (FEC) has announced it will take comments until April 17 on whether it should start a rulemaking to consider whether or not to provide an exemption to existing law for nonprofits. The exemption would allow nonprofits to conduct issue advocacy through broadcast ads within 30 days of a primary and 60 days of a general election. Advocates for the action encourage the FEC to act quickly so that nonprofits understand what they can do prior to the November elections.

The request for public comment was spurred by a Feb. 16 petition filed by OMB Watch, AFL-CIO, Alliance for Justice, National Education Association and U.S. Chamber of Commerce. The ban on pre-election broadcast "electioneering communications" has been mired by what many consider inconsistent regulation and thus confusion among nonprofits as to what they can and cannot do in this election season.

The Bipartisan Campaign Reform Act of 2002 (BCRA) bars any broadcast ad that references a federal candidate within 30 days of a primary election or within 60 days of a general election. The FEC had initially exempted organizations under Section 501(c)(3) of the tax code from this "electioneering communications rule" due to their nonpartisan nature. Ads sponsored by such groups cannot support or oppose a candidate for elected office without losing their 501(c)(3) status. Thus, such ads would have to be issue ads, supporting or opposing legislation or policy

options.

Two of BCRA's co-sponsors, Reps. Christopher Shays (R-CT) and Martin Meehan (D-MA), filed a lawsuit challenging the FEC's exemption for 501(c)(3) organizations. A District Court ruled that FEC needed to reconsider its decision and provide more evidence of why it wanted to exempt 501(c)(3) groups or alternatively drop the exemption. FEC ultimately decided to drop the exemption. Thus, 501(c)(3) groups can no longer make refer to federal candidates in broadcast ads during the banned periods, including incumbents who are running again, even when they are lobbying on legislation.

On a separate track, the Wisconsin Right to Life, a 501(c)(4) organization, decided to challenge the ban on broadcast ads as a restriction of First Amendment rights. A lower court ruled against the organization in *Wisconsin Right to Life, Inc. v. FEC*, saying there was no right to challenge the law. WRTL appealed to the Supreme Court, which ruled otherwise, sending the decision back to the lower court for consideration of the facts in the Wisconsin case. The Supreme Court's ruling noted that the FEC has the statutory authority to craft a rule to protect ads that do not "promote, attack, support or oppose" federal candidates. This means that the FEC can promulgate a rule that allows nonprofits to engage in issue advocacy through broadcast ads during the banned period.

It was as a result of this Supreme Court decision that the group of nonprofits filed their Feb. 16 petition to the FEC requesting that the FEC start a rulemaking.

For nonprofits, this is a particularly important and time-sensitive issue, with fall elections scheduled for Nov. 7. Without a new rule, broadcast ads referencing a federal candidate will be prohibited starting on Sept. 7, just as Congress considers a host of legislation, including annual appropriations bills. As a result nonprofits that wish to lobby on such legislation will be prohibited from using broadcast ads during this period. Similarly, nonprofits would need to know when a state primary is scheduled, in order not to run afoul of rules against running broadcast ads 30 days before a primary.

On the other hand, the FEC may feel that it need not engage in a rulemaking until the lower court reconsiders the WRTL case. Depending on the timing and outcome of that court's decision, nonprofits may be out of luck, particularly for this year.

Click here to send a message to the FEC. OMB Watch will also be collecting signatures for a sign-on letter for national organizations. Please email ombwatch@ombwatch.org if your organization is interested in reviewing the sign-on letter.

Groups Complain of FBI Intimidation

A Michigan forum on freedom of information and open government held during Sunshine Week last month provoked a call to the event's sponsor, the local League of Women Voters, from a Federal Bureau of Investigation (FBI) agent. The agent complained about one panelist's statements that criticized the USA PATRIOT Act and suggested the League should have had someone from the federal government on the panel. Within days Common Cause and the League wrote to FBI Director Robert Mueller to protest.

The March 14 panel on open government, held by the League of Women Voters of Berrien and Cass counties in Three Oaks, MI, featured a journalist, prosecutor, communications professor, and Common Cause president Chellie Pingree. Pingree noted that freedoms are being eroded in the name of national security, saying that concern about the Patriot Act is justified, and "Government wants to act in secrecy to invade your privacy."

A local newspaper covered the event and quoted Pingree. Within a few days, St. Joseph FBI

agent Al DiBrito had called Susan Gilbert, president of the local League, claiming that Pingree's comments were "way off base" and that the League should have had someone from the federal government on the panel. He went on to say that someone from the U.S. Attorney's office in Grand Rapids would be contacting her to set the record straight on the Patriot Act.

Gilbert believed the call to be a threat, telling the *Herald-Palladium* that the FBI "should not go around intimidating the League of Women Voters and Common Cause because they don't like the Patriot Act. There are many people who don't like the Patriot Act, including members of Congress. I'm just stupefied."

DiBrito told the press that the call was only meant to invite the League to debate what was reported. It is widely regarded to be wholly inappropriate, however, for a government agency to attempt to dictate who speaks at meetings of citizen organizations.

Such subtle intimidation is even more problematic when the agency in question is the FBI, with its history of unconstitutional surveillance and interference in organizations, including the COINTELPRO program. COINTELPRO is an acronym for an FBI counterintelligence program whose purpose was to neutralize political dissidents. It operated from 1956-1971 and conducted operations against civil rights, anti-war, and many other groups. The program ended in 1971 after it was publicly exposed.

The letter sent by Common Cause and the League to Mueller described what had transpired, explaining that "[w]hen the country has far more pressing security and terror concerns, we question the FBI using precious resources hounding leaders of two of the most distinguished citizen advocacy organizations in the country. Is this the kind of behavior citizen activists can expect from the FBI? To us, it smacks of intimidation." Pingree and Kay Maxwell, President of the League of Women Voters, in a joint statement averred that "[c]itizens can be intimidated when an FBI agent calls and questions their activities." The statement also raised the question, "Why should a citizen meeting on open government merit the attention of the FBI?"

Senate Overwhelmingly Approves Lobby Reform; House To Take Up 527s

Voting just hours after former lobbyist Jack Abramoff was sentenced, the Senate overwhelmingly passed what critics are calling a tepid effort at lobby and ethics reform. Now the pressure is on the House, where leaders have struggled to balance the need to pass reforms with a rebellious rank-and-file that wants business as usual.

On March 29, the Senate passed S. 2349, the Legislative Transparency and Accountability Act, by a roll call vote of 90-8. Senate Republican and Democratic leaders praised the final Senate bill as a bipartisan response to scandals that recently rocked Capitol Hill, involving Abramoff and former Rep. Randall "Duke" Cunningham (R-CA).

However, both good government groups and reform-minded lawmakers were disappointed with the final product, particularly because the bill offers little in the way of meaningful enforcement. Sen. John McCain (R-AZ), who introduced what became the framework for the bill at the end of last year, called S. 2349 "very weak" in its final form and voted against its final passage. Also voting against the bill were Russ Feingold (D-WI), Tom Coburn (R-OK), Barack Obama (D-IL), Lindsey Graham (R-SC), Jim DeMint (R-SC), James Inhofe (R-OK) and John Kerry (D-MA). Obama was the lead person for the Democrats on the reform measure, and like McCain, felt the final product was weak.

Highlights of the legislation

Increased Reporting: Registered lobbyists would have to file quarterly reports electronically on their activities, instead of the current semiannual reports. The reports would be available to the public online in a free "searchable, sortable, and downloadable" database. Filing would be electronic in order to keep the database up to date. The threshold for filing under the Lobbying Disclosure Act (LDA) would be $2,500 spent per quarter by a lobbying firm for a client or $10,000 spent per quarter by an organization on lobbying activities. The Government Accountability Office would conduct an annual audit of compliance.

Grassroots Lobbying Disclosure: A provision requiring disclosure of grassroots lobbying expenses over a certain threshold was retained in the bill. While grassroots lobbying expenditures would not be used to calculate whether an organization is required to report, expenditures of $25,000 or more per quarter for grassroots lobbying would have to be disclosed for organizations already reporting under the LDA. The amendment excludes any grassroots lobbying communications to an organization's members. This is defined in accordance with the tax code definition - that is, anyone who contributes more than a nominal amount of time or money to the organization or is entitled to participate in the governance of the nonprofit. Reporting would also not include communications directed at less than 500 members of the general public. Voluntary or unpaid grassroots lobbying efforts also do not need to be reported. Additionally, 501(c)(3) organizations are allowed to use the tax code definitions of grassroots lobbying in place of the new definitions. The definition for other entities includes "voluntary efforts of members of the general public to communicate their own views on an issue to federal officials or to encourage other members of the general public to do the same."

Disclosure of Coalition Members: The Senate bill requires public disclosure (by the registrant) of organizations that contributes $10,000 or more to a coalition or association that registers under the LDA and substantially participates in the planning, supervising or controlling the management of lobbying activities. Such disclosure, however, would be waived for organizations that make the affiliation or funding of the coalition "publicly available knowledge."

Disclosure of Campaign Contributions: The Senate bill would require any person who registers as a lobbyist to report all political contributions they make over $200 on an annual form submitted to the Senate Secretary's office. An earlier version of the bill had such disclosure done through the LDA report that an organization submits, which would mean that an employer would see an employees campaign contributions.

Privately Funded Travel: : Privately funded travel (such as travel paid for by a nonprofit) would still be permitted, but subject to new requirements. For example, itineraries would have to be pre-approved by the Ethics Committee for certification that the trip is primarily for educational purposes, and lobbyists would be banned from such trips. A report on the trip would be required within 30 days of the lawmaker's return and would be posted on the Senate's website.

Earmarks and Other Items: Earmarks and other items added in conference to appropriations, authorization bills, tax or other legislation that were not part of either the House or Senate bills would be subject to points of order on the floor, and 60 votes would be needed to waive objections. If there are not 60 votes to override the point of order, the provision would be stripped, but the conference report would not be killed. Additionally, bills, amendments and conference reports would identify the lawmaker responsible for each earmark, including for revenue earmarks. However, there would be no specific method for challenging these earmarks. Finally, conference reports would be posted on the Internet at least 48 hours before a Senate vote.

Gifts, Meals, Drinks: Senators and aides could not accept meals or drinks from registered lobbyists, but could still accept meals valued at up to $50 from others. This must be disclosed on

their websites within 15 days.

Revolving Door: The one-year ban would be extended to two years before members could lobby former colleagues. Senior staff would be banned for one year before doing any congressional lobbying.

Other Items: Floor privileges for former members of Congress who are now lobbyists would be revoked. Immediate family of Senators who lobby would be prohibited from having official contacts with that Senator's staff. There would be mandatory training for Senators and their staff on ethics. Finally, there would be a five-year Commission to Strengthen Confidence in Congress that would make recommendations on further strengthening lobbying and ethics reforms, including enforcement of laws.

Amendments Offered

When the Senate returned from its March recess, whether it would be able to move forward on legislation was unclear. On March 27 Sen. Charles Schumer (D-NY), however, agreed to withdraw his Dubai Ports World amendment to allow discussion on lobby reform to continue. The Senate then voted on two amendments. The first would have created an Office of Public Integrity to investigate possible violations of Senate rules. Members of the Senate Ethics Committee campaigned hard against the amendment, saying it would have undermined and duplicated that panel's diligent and discreet work. The amendment, introduced by Sens. John McCain (R-AZ), Barack Obama (D-IL), Susan Collins (R-ME) and Joe Lieberman (D-CT), failed, 30-67. The second to receive a vote would have required public disclosure of the name of the Senator who placed a hold on a bill three session days after the hold is first placed in secret. Offered by Sens. Ron Wyden (D-OR) and Charles Grassley (R-IA), the amendment passed, 84-13.

With over 80 other amendments looming, Majority Leader Bill Frist (R-TN) worked hard behind the scenes to limit the number of amendments. On March 28 he called for a cloture vote to limit the number of non-germane amendments to the underlying legislation. The motion to invoke cloture passed, 81-16.

Several other potentially significant amendments were offered but dropped without a vote after one of the bill's managers, Sen. Trent Lott (R-MS), raised a point of order that they were non-germane. These included proposals by Sen. James Inhofe (R-OK) to require jail time for an officer of a nonprofit who uses federal funds to lobby. Also dropped was a proposal by Sen. Max Baucus (D-MT) to impose donor disclosure requirements on charitable organizations that are associated with a member of Congress. For more on the Inhofe and Baucus provisions, see our paper, Senate Lobby Reform: Specific Provisions Relating to Nonprofits.

The Senate bill contains both statutory provisions and changes in Senate rules and procedures, but even the rules changes will not go into effect immediately. The legislation still must pass in the House, go through a conference and be signed by the president before it takes effect.

527 Legislation Up Next for the House

The House is scheduled to take up H.R. 513, legislation that would restrict the expenditures of 527 organizations during the first week of April, abandoning an attempt to combine it with lobbying reform. Democrats oppose limiting 527 organizations, because Democratic party-aligned groups have spent nearly twice as much as their pro-Republican counterparts.

The House leadership package, H.R. 4975, which Rep. David Dreier (R-CA) introduced shortly before the March recess, has been sent to five different committees, although the only committee to hold hearings has been Dreier's own Rules Committee. The five committees of jurisdiction are expected to mark up their respective components in early April, with floor action

not likely until May, later than what the time frame called for by House Majority Leader John Boehner (R-OH). Dreier has said he was open to changing the underlying bill. "While I fully support the bill in its current form, I've been in Congress long enough to know that refinements will still be made," he said.

Dreier's third hearing on lobby reform, held March 30, gave members the chance to offer tweaks to the bill. Members who testified, requesting their proposals be included in the final package, indicated that House GOP leaders still face an uphill struggle to present a final bill that will garner strong support within the Republican Conference, or bipartisan support in the House. Member proposals included creation of an Office of Public Integrity; greater lobbyist disclosure; a blanket gift ban offered by Rep. Christopher Shays, (R-CT); increasing filing and disclosure requirement for foreign corporations and governments, offered by Rep. Jean Schmidt (R-OH); and at least doubling the so-called revolving door rule for members and aides who leave to lobby for two years, offered by Rep. Martin Meehan (D-MA).

Senate Calls for Investigation of TRI Changes

A bipartisan group of senators has called for an investigation into the U.S. Environmental Protection Agency's (EPA) proposals to relax chemical reporting requirements for large industrial facilities. On March 27, Sens. Frank Lautenberg (D-NJ), Jim Jeffords (I-VT), and Olympia Snowe (R-ME) sent a letter to the Government Accountability Office (GAO), requesting the office investigate whether EPA had adequately considered how reducing Toxics Release Inventory (TRI) information would impact communities and data users, including federal and state programs that rely on TRI data.

Among the specific issues GAO will investigate were the impacts of reduced toxics data on EPA enforcement efforts, environmental justice programs, and the ability to provide first responders with up-to-date information on toxic chemicals. The GAO was also requested to examine if the EPA's proposed changes conform to legal requirements, under the Emergency Planning and Community Right to Know Act, that any threshold changes maintain information on a substantial majority of releases for each chemical.

One EPA program that relies on TRI data is the Risk Screening for Environmental Indicators program, which combines TRI release data with hazard and potential exposure data. The hazardous air pollutant program also uses TRI data to help track sources and ambient air concentrations of toxic chemicals. The EPA's voluntary persistent, bioaccumulative toxics tracking program relies on chemical-specific TRI data not available through other EPA programs. While states have submitted comments to demonstrate how the proposals will harm their programs, some believe that those within EPA would be reluctant to comment against the proposals, even if the proposals would harm their programs. The GAO report should shed some light on the true impact of EPA's proposals.

Many states have made it clear, in comments to EPA, that the proposals will negatively impact their programs. For example, Maine's Department of Environmental Conservation sent comments to EPA expressing fear that the proposals would inflict significant harm on Maine's 'toxic reduction' program. According to Maine's comments, "Maine has a Toxics Reduction Program centered on public accountability, [and] this proposal would significantly curtail what the public can review." Maine, according to the comments, would lose almost 70 percent of its TRI inventory and the ability to track 70 percent of Toxic Release data in the state. An initial analysis of the comments shows that at least 20 other states have expressed similar concerns.

According to Snowe, "The Toxic Release Inventory provides invaluable data to the public about the release of toxic chemicals in our environment. It simply does not make sense for the EPA to alter the Toxic Release Inventory before we have an understanding of the impact these changes

will have on communities throughout Maine and the country."

On a related note, hundreds of organizations from around the country are also working to prevent EPA's efforts to reduce public right-to-know. Last week, each congressional office received a letter signed by 233 environmental, health, labor, public interest, socially responsible and research organizations, calling on Congress to stop EPA from reducing toxic chemical reporting.

"On behalf of the 233 undersigned organizations," the letter states, "we are writing to urge Congress to stop the [EPA] from moving forward with a set of proposed changes to the Toxics Release Inventory (TRI). The changes will make it more difficult for citizens to track toxic pollution in their neighborhoods and take steps to reduce the impact on their family's health."

There's a New Chemical Security Bill in Town

On March 30, Sens. Frank Lautenberg (D-NJ) and Barack Obama (D-IL) introduced a new bill on chemical plant security, The Chemical Security and Safety Act, with a major improvement over current chemical security proposals: it includes a requirement that chemical plants consider inherently safer technologies. The bill also establishes a more active role for the U.S. Environmental Protection Agency (EPA) in the implementation of chemical security requirements.

The Chemical Security and Safety Act would require that the Department of Homeland Security (DHS) work with EPA, as well as states, to identify "high-priority" facilities that would receive priority oversight. In coordination with EPA and state and local agencies, DHS would establish regulations requiring high-priority facilities to develop a prevention, preparedness and response plan after conducting a vulnerability assessment. The bill would also require companies to evaluate the possibility of using less dangerous chemicals and technologies as part of the vulnerability assessments and prevention plans. Under the Lautenberg-Obama bill, companies would be required to implement any feasible safer technologies in order to minimize damage done by a terrorist attack on a chemical plant.

Currently, the lead legislation in the Senate is The Chemical Facility Anti-Terrorism Act of 2005 co-sponsored by Sens. Susan Collins (R-ME) and Joseph Lieberman (D-CT), the Chair and ranking minority member respectively for the Homeland Security and Governmental Affairs Committee. While describing the Collins-Lieberman bill as a good first step, the Democrat senators explained that they introduced the new tougher legislation to raise the bar on chemical security legislation. Lautenberg and Obama hope to have some of their stronger provisions incorporated into the Collin-Lieberman bill.

In a March 21 speech to a chemical industry conference, DHS Secretary Michael Chertoff recently called for federal legislation. However, critics believe that Chertoff's approach would be overly lenient on the chemical industry. Lautenberg characterized the DHS proposal as "weak" and "tepid," stating that it was the "Trust the chemical industry; they will do the right thing" approach.

The new bill included Sens. John Kerry (D-MA), Joe Biden (D-DE), Richard Durbin (D-IL), and Robert Mendez (D-NJ) among its cosponsors.

No date has yet been scheduled for a markup of the Collins-Lieberman bill. Lieberman has stated his intention to offer an amendment on inherent safety when the bill is marked up.

Congress Pulls Chair Up to NSA Spying Table

The Senate has continued its efforts to establish some level of oversight of the National Security Administration (NSA) warrantless spying program. The Senate Judiciary Committee held another hearing on the program, while three Senate bills have been introduced to establish congressional control over the program.

The Senate Judiciary Committee's third hearing on the NSA program marked a historic occasion in which four former members of the secret Foreign Intelligence Surveillance (FISA) Court of Review testified. The March 28 hearing consisted of the judges dodging questions regarding the legality of the program, while encouraging the committee to give the FISA court a role in determining the constitutionality of the NSA program. The judges also endorsed Judiciary Committee Chair Arlen Specter's (R-PA) position that the FISA court should exercise oversight of the program.

In addition to the testimony, the committee received a March 23 letter from Judge James Robertson, who resigned from the FISA court over the NSA program's circumvention of FISA procedures. Robertson stated that the FISA court is "best situated to review the surveillance program" and suggested a few changes to strengthen Specter's bill, The National Security Surveillance Act of 2006.

Another bill, the Terrorist Surveillance Act, was introduced by Sens. Mike DeWine (R-OH), Lindsay Graham (R-SC), Chuck Hagel (R-NE) and Olympia Snow (R-MW). The bill would provide the judicial and legislative framework for the NSA spying program by, among other things, allowing the NSA to monitor emails and telephone conversations of suspected terrorists for 45 days without receiving judicial approval. After 45 days, the government would have to receive a court order from the FISA court. If the NSA had insufficient evidence to receive a FISA order, the agency would have to notify new House and Senate Terrorist Surveillance subcommittees of the surveillance.

Morton Halperin, senior fellow at the Center for American Progress, criticized the two bills in his testimony before the Judiciary Committee as "sweeping proposals" that should be "deferred unless and until a clear showing has been made to Congress as to why they are necessary." Others who did not testify also are critical of the two bills. For example, calling the bills "premature," the Center for Democracy and Technology offers detailed analysis of the shortcomings of the two bills.

Sen. Charles Schumer (D-NY) also introduced legislation to jettison court cases challenging the NSA program to the Supreme Court. Upon their appeal at the district court level, the cases would immediately move to the Supreme Court. Schumer stated that the "most logical place for this to be settled is in the U.S. Supreme Court" and argued that without the bill it could take three or four years for the cases to reach the Supreme Court for final resolution.

The cases currently making their way through the judicial system include a Michigan case brought by the American Civil Liberties Union (ACLU), which claims that the NSA program violates the First and Fourth Amendments and a case in Oregon that may offer concrete evidence of NSA's warrantless domestic spying.

In a more political news, Capitol Hill was abuzz with Sen. Russ Feingold's (D-WI) proposal to censure President Bush who, Feingold asserts, "so plainly broke the law and violated the trust of the American people." The Senate Judiciary Committee held a March 31 hearing to consider the possibility of a censure.

NASA Launches New Disclosure Policy

The National Aeronautical and Space Administration (NASA) released a new policy statement

governing public dissemination of information from the agency. Released on March 30, the policy is an apparent response to allegations that the agency attempted to suppress scientific research on climate change that contradicted Bush administration policy on the issue. While the new policy does begin to clarify and establish official guidelines for release of information, it remains too vague and contains too many loopholes to fully function as a vehicle for public disclosure.

While the new policy statement may have more style than substance, it at least sets the right tone. For instance, the first of five principles declares that NASA "is committed to a culture of openness" and assures the public that agency information "will be accurate and unfiltered." Further, the policy makes it clear that scientists are free to express their personal views, as long as they make clear that such views do not reflect the official position of the agency.

The five principles at the heart of NASA's new disclosure policy include commitments to:

- Maintain a "culture of openness with the media and public" and that information will be "accurate and unfiltered."
- Provide the widest practical and appropriate dissemination of prompt, factual and complete information.
- Ensure timely release of information.
- Allow employees to speak to the press or public about their work.
- Comply with other laws and regulations governing disclosure of information such the Freedom of Information Act or Executive Orders.

The new policy also lays out the responsibilities of NASA staff when releasing public information or giving interviews to the media, as well as procedures for coordinating information releases. Other sections explain restrictions in the disclosure policy for classified or “sensitive but unclassified” (SBU) information.

NASA enlisted a working group of staff with backgrounds in science, engineering, law, public affairs and management to develop the policy in response to claims from NASA climatologist James Hansen that a political appointee, ironically in the position of Public Information Officer, attempted to prevent Hansen from being interview by National Public Radio. The appointee, George Deutsch, has since left the agency, and NASA apparently would like to ensure that the tactics he used also leave. Under the new policy, Hansen would clearly be allowed to do an interview with NPR, as long as he made clear that his statements were his own opinions and not official positions of the agency.

However, the new policy has problems that will limit its effectiveness. First and foremost is the overall lack of detail throughout its provisions. Several guidelines and criteria have not even be written that will be important to understanding the impacts of this policy. For instance:

- "The Assistant Administrator will develop criteria to identify which news releases and other types of public information will be issued nationwide by NASA Headquarters.
- “All NASA employees involved in preparing and issuing NASA public information are responsible for proper coordination...to include review and clearance by appropriate officials prior to issuance...through procedures developed and published by the NASA Assistant Administrator for Public Affairs.
- “The Assistant Administrator for Public Affairs shall publish guidelines for the release of public information that may be issued by Centers without clearance from Headquarters’ offices.”

These missing policy provisions and procedures, along with details of key definitions and criteria, are vital in determining how well NASA's new disclosure policy will function. Without them, the policy remains incomplete and, thus, weak and vulnerable to manipulation.

For instance, the new policy is primarily directed at the release of information to the media, such press releases and events, and is not intended to apply to scientific reports or technical data. The scope of the policy is so vaguely defined, however, that the possibility exists that it could interfere with the release of scientific information. The information covered by the policy is defined as "information in any form in any form provided to news and information media, especially information that has the potential to generate significant media, or public interest or inquiry." Information that has the potential to generate public interest or inquiry could easily include scientific or technical reports on controversial issues, such as global warming.

Provisions establishing responsibilities and procedures for coordination also fall short of the mark. Several provisions establish, what appears to be an overly broad review and control process for disclosure of information. For instance, NASA requires that all materials being prepared for public release receive "review and clearance by appropriate officials." A provision for "Dispute Resolution" establishes that any dispute arising from a decision to issue a "news release or other type of public information will be addressed and resolved by the Assistant Administrator for Public Affairs." No explanation is given of what exactly constitutes a "dispute," who can raise one, or what the possible repercussions staff members face for being involved in a disclosure dispute. These provisions, coupled with the policy's vague scope, could easily result in discouraging releases and statements by NASA staff on scientific information.

These bureaucratic controls could be misused to allow political manipulation and spin-doctoring of scientific materials, particularly since the release of information must be approved by personnel without a background in science--precisely what the policy is supposed to prevent. A policy conducive to a "culture of openness," it seems, would require *notification* of the appropriate officials and public affairs specialists about the release of scientific information, rather than *approval* from non-scientists.

Another of the policy's major problems is the enormous loophole created by provisions restricting the disclosure of "sensitive but unclassified" (SBU) information. The policy's definition of SBU includes very specific information, such as:

- proprietary information under confidentiality or nondisclosure agreements;
- information on source selection, bids and proposals;
- information subject to export control;
- privacy information; and
- predecisional materials.

The definition also incorporates a catch-all clause that is broad and vague enough to apply to almost any information. The provision rounds out the SBU definition by including information that could indicate "U.S. government intentions, capabilities, operations, or activities or otherwise threaten operations security."

The sweeping definition provides no specific criteria to allow NASA staff to confidently distinguish between legitimate SBU information and other information about NASA operations. The provision also fails to establish procedures for the information to be properly reviewed. Without these clarifying policy details, and with employees facing possible prosecution or disciplinary action should SBU information be released without permission, these provisions will almost certainly lead to overuse of the SBU category and unnecessary withholding of information from the public.

Other agencies, including the Department of Homeland Security, have been widely criticized by information access and open government advocates for vague policies that overly restrict disclosure of information. It appears, unfortunately, that NASA has failed to learn from the pitfalls encountered by other agencies and to develop a robust, detailed disclosure policy.

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Sunset Commission Proposal Would Put Gov't Programs on Chopping Block

House conservatives have reportedly secured a floor vote for a radical sunset commission proposal that would ram program terminations through Congress.

A Brief Overview

To ensure passage of the House Fiscal Year 2007 budget resolution, House Majority Leader John Boehner (R-OH) reportedly struck a deal with Republican Study Committee (RSC) leaders for floor consideration of several proposals, including a presidential line-item veto and a proposal to institute sunset commissions.

Although the House leadership was unable to line up enough votes to complete work on the budget resolution, no reports have surfaced that suggest the promises to the RSC have been negated. Some reports place the floor vote on sunsets as early as June.

Though various versions of the sunset commission concept have floated through Congress, the

leading proposals in the House are two bills: one by Rep. Kevin Brady (R-TX), mirroring a White House proposal, and one introduced by Rep. Todd Tiahrt (R-KS). Both would create unelected commissions that would recommend which programs get to live or die. They would also create mechanisms to fast-track the recommendations through Congress and require straight up or down votes with no opportunity for amendments.

Usurping Congressional Authority

The White House budget routinely proposes cuts, elimination, or drastic changes to government programs. Popular and successful programs, such as the Community Development Block Grants, have faced cuts and overhauls in the President's budget repeatedly for the last several years. These programs survived because Congress has intervened and continued to authorize funding and provide annual appropriations. The sunset commission proposal, however, would undermine Congress's ability to save programs that the White House is bent on eliminating.

If a sunset commission were to go forward, these programs would likely be the first to face the ax. The Tiahrt bill specifically requires the White House to evaluate program effectiveness, making it likely that the White House's programs slated for termination will be the first to come before the sunset commission. At the same time, the fast track process will make it difficult for Congress to save the programs facing elimination.

Below are some examples of programs that have been suggested for termination by the White House and are likely to face the sunset commission early on, if such a commission were enacted.

- **Community Development Programs:** The Community Development Block Grant, which provides funds to state and local governments for a variety of development projects, is a common target both of the White House and of the RSC.
- **Education Programs:** Programs that help develop and retain quality teachers, such as the Teacher Quality Enhancement Program and the Perkins Loan Cancellation program, which forgives the 100 percent of Perkins loan debt for public school teachers in underserved communities, could be in jeopardy. Education programs targeting rural, low-income or at-risk youth are also often zeroed out in the President's budget. These programs include Upward Bound and Even Start.
- **Rural Community Programs:** In both 2006 and 2007, the White House has recommended the termination of a host of programs meant to serve rural communities, including the Rural Fire Assistance program, which provides grants to rural communities to bolster the capacity of volunteer fire departments through training, equipment purchases and fire prevention work, and the Community Connect Grant Program, which provides broadband to rural communities to support economic growth and enhance education, health care, and public safety services,
- **Healthcare**: Federal grants that underwrite the construction of healthcare centers and provide funding for a host of medical services are likely at risk. The 2006 and 2007 White House budgets have targeted for elimination the Center for Disease Control and Prevention's Preventative Health and Health Services Block Grant, the primary source of flexible preventative health funding for states.

While a far vaster universe of agency programs would be subjected to a sunset commission, the above examples have been targeted by both the White House and the RSC for termination. Congress has saved these programs in the past through the appropriations process, but the creation of a sunset commission might make this program hit list a reality, rather than a fantasy of the White House and hard-line conservative lawmakers.

EPA Forced to Turn Over Documents on Controversial Mercury Program

A federal judge ordered the U.S. Environmental Protection Agency (EPA) on April 13 to release documents related to an analysis of alternatives to its controversial power plant mercury 'cap and trade' program. After the agency rejected a July 2004 request for the documents under a Freedom of Information Act (FOIA), Massachusetts Attorney General Thomas F. Reilly filed a lawsuit in March 2005 against EPA to obtain the information.

Documents in question pertain to analyses comparing two different approaches for regulating mercury emissions. The first approach, favored by industry and adopted by EPA in May 2005, was the 'cap and trade' or 'emissions trading' approach. The second, favored by environmental groups and public health officials, was the 'maximum achievable control technology' or MACT approach.

EPA produced the detailed modeling and analysis to evaluate the ability of each approach to regulate mercury emissions from coal-fired power plants--the nation's largest source of mercury emissions. The Attorney General Reilly filed a formal FOIA request with EPA for the analyses in July 2004. EPA rejected the request claiming the documents were part of its 'deliberative process' and, therefore, exempt from disclosure under FOIA. After hearing the case, however, Federal Magistrate Judge Robert Collings ruled that EPA could not withhold the analysis documents, because they were from investigative tools that produced facts and not the agency deliberative process or opinions.

Critics of EPA's mercury program maintain the withheld documents represent a clear case of EPA preventing access to information in order to limit criticism and accountability. According to the Massachusetts Attorney General's office, "We will now be able to see the documents that the EPA has tried to keep hidden. By making the facts available, the public will now be able to understand the choices the EPA is making and whether the agency is meeting its important responsibility to protect the public health and welfare."

Open government advocates hope that the court decision will compel other agencies to be more forthcoming in response to FOIA request. Currently, agencies use exemptions of 'deliberative process' and 'pre-decisional' frequently to withhold information requested through the FOIA process. Judge Collings' opinion in the mercury case may establish a clearer limit on the types of information that can qualify as deliberative. Collings opinion that the results of investigative tools cannot be withheld as deliberative could have repercussions for disclosure within all federal agencies.

The mercury cap and trade scheme adopted by EPA has proved to be extremely controversial and has already received a legal challenge, the outcome of which may be influenced by the release of the analysis documents. The program sets an annual cap, or limit, on the amount of mercury power plants may emit. Facilities below the cap can then sell the 'right to pollute' to facilities above the cap. The goal is to keep the annual aggregate mercury releases from all power plants below a set level. However, as environmental groups and health agencies have pointed out, this approach fails to account for the local problems caused by high emissions of mercury, which is a dangerous neuron-toxin. Essentially, the cap and trade approach would do nothing to prevent the creation of toxic hot-spots where certain communities would be exposed to disproportionately high levels of mercury.

The documents that EPA has been ordered to release may shed new light on many of the issues

and controversies surrounding the rule.

Timeline of Events

- In February 2005, EPA's Inspector General accused EPA officials of deliberately skewing their analyses of the cap and trade approach to make it appear more effective than it really is.
- In March 2005, the Government Accountability Office (GAO) reported that EPA distorted the analysis to favor its cap and trade proposals and did not provide adequate documentation of the technology-based MACT option.
- In May 2005, when the rule was officially published, 13 states led by New Jersey, and many environmental groups sued the EPA in federal appeals court challenging the mercury trading program. The case is pending in the U.S. Court of Appeals for the D.C. Circuit.
- In Oct. 2005, EPA responded to petitions filed by several states, tribes, industry, and environmental groups by reopening the mercury rule for public comment which closed Dec. 19, 2005.

In Ethics Reform, Congress Proposes Ways to 'Follow the Money'

In response to the ongoing corruption scandals unfolding in our nation's capitol, Congress has taken up efforts to pass lobby and ethics reform. Among the provisions proposed for inclusion in lobby reform legislation was one that simply seeks to uncover where taxpayer dollars are going, specifically money spent on government contracts and grants. Unfortunately, at this point the provision appears unlikely to be included in final legislation.

Sens. Tom Coburn (R-OK) and Barack Obama (D-IL) cosponsored Amendment 3175 that would require the Office of Management and Budget to create a free online database, which the public could search for contracts and grants by company, agency, dollar amount, geographic region, and other criteria. Currently, data for government contracts is available through a General Services Administration contractor, but the searchable features are widely considered inadequate, and downloading the data is extremely difficult. Federal grants data is available from the Census Bureau; while easily downloadable, information is not searchable with the existing service.

The Coburn-Obama contracts and grants amendment was stripped from the Senate lobby reform bill, along with all other amendments, as being non-germane. Undeterred, Coburn and Obama along with Sens. Thomas Carper (D-DE) and John McCain (R-AZ) introduced the amendment on April 6 as the stand-alone bill, the Federal Funding Accountability and Transparency Act of 2006.

On the House side, Reps. Roy Blunt (R-MO) and Tom Davis (R-VA) introduced related legislation, H.R.5060, on March 30. Blunt and Davis' bill, however, would only establish online access to federal grants data, leaving contracts to remain largely hidden from public scrutiny. Critics charge that, without increased access to contracts data, neither Congress nor the public will be able to track where federal dollars are being spent. They also point out that spending on contracts is significantly greater than spending on grants. In general, nonprofits and state and local governments get grants; for-profit companies get contracts.

The Coburn-Obama legislation represents the more comprehensive and uniform approach to

shining sunlight on the spending habits of our government. However, the Blunt-Davis legislation may have greater opportunity for movement, since it could still be attached to the lobby reform bill being developed in the House--a vehicle unavailable to the Coburn-Obama legislation.

EPA Releases 2004 Toxic Release Inventory, Draws Questionable Conclusions

Last week the U.S. Environmental Protection Agency (EPA) publicly released 2004 data on releases and disposals of toxic pollution throughout the country. EPA stressed that overall the data shows a 4 percent reduction in total release and disposal of toxic chemicals. When examined more closely, however, the data reveals a number of troubling trends in the 2004 data. The data is available for searching on OMB Watch's Right to Know Network (RTK NET) as well as EPA's TRI Explorer.

While EPA touted the minor reduction in toxic pollution, the agency's own analysis noted that the reduction was primarily the result of changing reporting standards for the mining industry, resulting in a 14 percent drop in mining pollution reported. Without this reporting adjustment, the 2004 Toxics Release Inventory (TRI) actually shows a slight increase from 2003. EPA also noted an alarming 10 percent increase over the previous year of toxic chemical releases into water.

The agency has also heralded significant reductions in key chemicals such as dioxin and mercury, which are among a category of chemicals persistent bio-accumulative toxins (PBTs) that EPA tracks more closely due to the significant health risks associated with them. EPA noted that dioxin and mercury have dropped 58 percent and 16 percent respectively from their 2003 levels. However, these "reductions" are an illusion caused by a spike of releases and disposals that occurred for these chemicals in 2003. Overall, releases and disposals for both chemicals are up--dioxin has increased 13 percent since 2000 and mercury is up 29 percent since 2000.

Initial state-level analysis offers a glimpse into the enormous fluctuations and disparities that still occur in toxic pollution. Some states, such as Washington, Montana, Missouri and Arkansas showed increases in releases and disposals of toxic chemicals ranging between 45 percent and 22 percent. Other states showed equally large reductions. U.S. PIRG has detailed the varied performance that occurred in the states. This wide range of results across regions demonstrates the need for detailed and consistent reporting. Without such reporting, communities might not know whether their area is getting cleaner or dirtier when it comes to toxic pollution.

Unfortunately, EPA's 2004 TRI data may be one of the last complete reviews the public gets of toxic pollution. The agency is currently pursuing plans to significantly reduce the amount of information collected under the TRI program. The agency has proposed significantly raising the threshold for detailed reporting of releases, which could mean that thousands of communities around the country would no longer know exactly what nearby facilities were releasing into the air and water. The agency also wants to cut the program back from annual to every other year, giving polluters a free ride every other year. As noted above, there are still significant fluctuations occurring in the TRI data, especially when individual chemicals, communities, facilities or even states are examined. EPA's threshold changes and alternate year reporting would eliminate our ability to track many of these important trends.

This is only the second time in 10 years that the agency has gotten the data out within 16 months of the close of the data's calendar year. Companies have six months after the close of each

calendar year to report their TRI data to EPA. The agency has typically taken almost an entire additional year before releasing the data to the public. This year EPA had a number of false starts for releasing the data. The expected date for release was pushed back repeatedly, and, when the information was finally made public on April 13, EPA failed to fully notify public interest and environmental groups about the release. According to EPA, which hastily held a briefing the following day, the omission was accidental. EPA also releases an annual online analysis called the Public Data Release (PDR), which includes a review of overall TRI results. EPA's 2004 PDR contained significantly more tables and charts detailing the biggest polluters in different industries, an improvement over previous years.

Report, Legislation Drive Push to End Pseudo-Classification of Information

No government-wide policies or procedures currently exist to guide agencies through deciding what information should be withheld from the public due to its "sensitive but unclassified" nature. The federal agencies are also without uniform rules that govern who makes such designations and how such information is handled, according to a new report from the Government Accountability Office (GAO). Legislation introduced by Reps. Tom Davis (R-VA) and Henry Waxman (D-CA), unanimously approved by the House Committee on Government Reform, would remedy many of the problems identified in the GAO report.

The GAO report, Information Sharing, was released to the public on April 17. It finds that federal agencies have 56 different "sensitive but unclassified" (SBU) designations, 16 of which are at the Department of Energy. GAO found a conspicuous lack of internal controls for handling SBU information. No government-wide definitions for SBU are in place, despite responsibility for such definitions having been given to the Office of Management and Budget and then to the Department of Homeland Security.

Even within the agencies, a majority reported not having policies detailing the procedures or standards for applying a SBU designation. Most of the agencies also "have no policies for determining who and how many employees should have authority" to make SBU designation. Support systems are limited that train agency staff on making designations or on auditing practices to determine the utility and accuracy of such designations.

"More than 4 years after September 11, the nation still lacks government-wide policies and processes to... improve the sharing of terrorism-related information that is critical to protecting our homeland," according to the GAO. Not only do agencies have trouble sharing information with each other, but also there is a problem of the SBU designation being misapplied. "This could result in either unnecessarily restricting materials that could be shared or inadvertently releasing materials that should be restricted."

Most information-sharing challenges, according to the report, were caused by the unevenness of SBU practices between agencies and the concern that another agency would not appropriately handle an agency's sensitive information. Such problems often prevent critical information from reaching the local level and have led to the over-sharing of non-critical information that can often swamp smaller state and local agencies. First responders, for instance, "reported that the multiplicity of designations and definitions not only causes confusion but leads to an alternating feast or famine of information."

Hearings conducted by Rep. Christopher Shays (R-CT) and the House Subcommittee on National Security, Emerging Threats and International Relations reached a similar conclusion:

lack of clarification often leads to overclassification and a failure of government accountability.

In response to this growing problem, Davis and Waxman introduced the Executive Branch Reform Act earlier this month. The bill would increase disclosure in the executive branch with provisions requiring key executive branch employees to file quarterly lobby communication disclosure forms. The bill would also enforce a two-year cooling off period between government employment and working as a lobbyist, and would strengthen national security whistleblower protections. Moreover, the bill would reform federal SBU policies. Specifically, it would:

- Require federal agencies to submit a report to the National Archivist, regarding who can designate information as SBU, the financial costs associated with categorizing documents as SBU, and the extent to which SBU designations are used to restrict the release of information that is not authorized to be withheld;
- Require the National Archivist to issue a report on SBU agency practices and recommendations that "would improve public access to information"; and
- Ban the use of all SBU designations that are not defined by federal statute or executive order except in rare cases.

Such reforms would pave the way to a uniform federal government SBU policy that, as documented by the GAO report, is badly needed. Effective reform would mitigate the concern of public release of sensitive information, while enabling the sharing of critical information across local and federal agencies. Uniform policy should protect against over-classification and maximize open government and accountability.

The Executive Branch Reform Act passed out of committee 26-0 and is expected to be included in the House lobbying and ethics reform package later this month. A similar bill has not been introduced in the Senate.

Grassroots Lobbying Issue Hits the FEC and the Courts

OMB Watch was among a varied group of nonprofit organizations that filed comments at the Federal Election Commission (FEC) urging it to quickly begin the process of rulemaking that would exempt grassroots lobbying from federal election regulation. At issue is a ban under the Bipartisan Campaign Reform Act of 2002 (BCRA) on "electioneering communications," broadcasts that refer to federal candidates within 60 days of a general election or 30 days of a primary. At the same time, a constitutional challenge of the ban filed by Wisconsin Right to Life (WRTL) works its way through the courts, and a Maine group launched a similar suit on April 3. Nonprofits that want to use broadcasts for lobbying efforts are anxious for a decision before this year's election season.

On April 17, OMB Watch joined 17 organizations in urging the FEC to immediately initiate rulemaking to exempt grassroots lobbying communications from the election-law restrictions on broadcast advertising. A letter signed by the groups supports a petition filed in February by the Alliance for Justice, AFL-CIO, the Chamber of Commerce, National Education Association, and OMB Watch that asks the FEC to exempt legitimate grassroots communications from "electioneering communication" prohibitions. Scores of other nonprofits have also weighed in.

The petition lists six suggested criteria that distinguish genuine grassroots lobbying broadcasts from sham issue ads. According to the petition, genuine grassroots issue advocacy includes broadcasts that:

- identify the federal candidate only as an incumbent public officeholder
- only discuss specific current legislative or executive branch matters
- call on the official to take a particular position or action in his or her official capacity or asks the public to contact them and urge them to do so
- limits statements on the official's record to his or her public statements or official actions
- does not refer to the election, candidacy or political parties, and
- does not comment on the officeholder's character or fitness for office.

The nonprofit groups' letter stated these criteria are a "good standard that balances the concerns of all sides and provides a workable test. It would provide nonprofits with the ability to engage in genuine grassroots lobbying, and it would eliminate any realistic concerns about such grassroots lobbying being employed as the functional equivalent of express advocacy."

The letter also noted that the Supreme Court recently reminded the FEC "that it has the authority to enact rules to exempt this kind of advertising from the broadcast ban." (*Wisconsin Right to Life v. FEC*, see FEC Opens Door To Rulemaking on Grassroots Lobbying for more information.)

OMB Watch filed supplemental comments noting that in March 2004, in another FEC proceeding, 122 members of Congress indicated that BCRA was not intended to limit civic participation. A letter signed by these lawmakers stated,

> *"There has been absolutely no case made to Congress, or record established by the Commission, to support any notion that tax-exempt organizations and other independent groups threaten the legitimacy of our government when criticizing its policies. We believe instead that more, not less, political activity by ordinary citizens and the associations they form is needed in our country."*

Two Court Cases Address the Issue

If the rulemaking goes forward and the FEC approves the proposed exemption two pending lawsuits challenging the "electioneering communications" rule could become moot. In late March, Wisconsin Right to Life (WRTL) sent the FEC a letter offering to settle its constitutional challenge against the rule if the FEC approved a grassroots lobbying exemption along the lines suggested in the petition. The letter explained, "While we do not believe that this rule goes as far as the U.S. Constitution would extend protection to grassroots lobbying, we believe that the proposed rule is a very good rule that balances the concerns of all sides and provides a workable test." The FEC voted to reject the offer on April 4.

Currently the WRTL case is back in a special three-judge court, which is complying with a Supreme Court order to determine if the facts of the WRTL case warrant a finding that the rule is unconstitutional as applied to them. WRTL asked the court to expedite the case after the Supreme Court ruling in January, but the court denied that motion. Instead, it is considering a schedule for the FEC to conduct discovery of facts to be considered before a decision is made. The FEC has estimated it needs several months, possibly until September, for the process, but WRTL has asked for an abbreviated schedule so that it can continue its broadcasts after the Wisconsin blackout period for "electioneering communications," which begins 30 days before the September primary election.

Another group, the Christian Civic League of Maine (CCL), filed suit seeking an injunction against the rule so that the organization can broadcast radio ads supporting the federal Marriage Protection Amendment, which may come up for a vote in June. The ads ask the public to contact Sens. Olympia Snowe (R-ME) and Susan Collins (R-ME) to seek their support. Since Maine will

hold a primary election in June with Snowe running for re-election, the blackout period for these ads will begin on May 14. CCL attorney James Bopp, Jr. noted that Snowe is unopposed in the primary.

Under BCRA all constitutional challenges are considered by the special three-judge court that is considering the WRTL case. If the court denies CCL's request for an injunction the group can appeal to the Supreme Court. If the court accepts the case, it could be decided sooner than the WRTL case.

Ohio Church Complaint Raises Questions of Fairness in IRS Enforcement

In an unusual case, 31 religious leaders in Ohio have written to the IRS objecting to inaction on a complaint against two Ohio mega-churches and their affiliates. The complaint filed in January alleges violation of the tax law's prohibition on partisan electoral activity by 501(c)(3) groups, which include religious organizations. Fairfield Christian Church, World Harvest Church and their respective affiliates, according to the group of pastors, carried out activities intended to help Republican Secretary of State Kenneth Blackwell in his bid for Ohio's governorship.

On April 7 the *New York Times* reported that, according to World Harvest spokesman Giles Hudson, the IRS had not yet contacted the organization about the complaint. The lag time is inconsistent with standards set out in the new IRS 2006 Political Activities Compliance Initiative (PACI).

The controversy began on Jan. 16 when 31 pastors, lead by Rev. Eric Williams of the North Congregational Church of Christ in Columbus, sent a 13-page letter to IRS Commissioner Mark Everson alleging violations by World Harvest and its affiliates Reformation Ohio and the Center for Moral Clarity; and by Fairfield Christian and its affiliate the Ohio Restoration Project. All five groups are 501(c)(3) organizations. The letter asks for an IRS investigation into whether the groups' tax-exempt status should be revoked; it also requests that the IRS seek an injunction to stop further flagrant violations. Three categories of activity were cited:

- sponsoring events featuring Blackwell but no other candidates,
- partisan voter registration drives, and
- distribution of biased voter guides.

Rev. Rod Parsley of World Harvest and Rev. Russell Johnson of Fairfield Christian denied their actions are partisan, accusing the complaining pastors of an "unholy alliance" with the secular left. Williams countered, saying, "The law allows church involvement in issues. This goes beyond issue-involvement to partisan politics and we're simply asking the IRS to uphold the law."

The pastors filing the complaint acquired assistance from Marcus Owens, an attorney with Caplin and Drysdale in Washington, D.C. and a former director of the IRS-exempt organizations division. On Jan. 16 Owens told the *Columbus Dispatch* that the complaint was extensively documented, noting "You have a number of churches and charities involved with a number of road trips for Mr. Blackwell, all of which seem to be aimed at gaining him visibility for his political campaign."

The complaint cites nine events where Blackwell was a featured speaker but no other candidates were invited. (Democrat gubernatorial candidate Brain Flannery said he has never been invited to an event organized by the churches or their affiliates.) For example, at an October 2005 event

at the Ohio statehouse sponsored by Reformation Ohio, Rev. Parsley shared the dais with Blackwell and called for registration of 400,000 new voters statewide.

In addition, Fairfield Christian let the Fairfield County Republican Party Central Committee meet at its facility without charge, with Committee Chair Carl Tatman saying, "The church was nice enough to volunteer the space as a donation." A Republican fundraiser was held at the church a month later. The IRS requires 501(c)(3) organizations to charge market rates for political use of their space.

The day after the complaint was filed the *Columbus Dispatch* reported that Blackwell told the pastors to ignore it, calling the 31 religious leaders who signed it "bullies." The next day Blackwell was the only candidate invited to speak to 450 pastors at a luncheon in Canton sponsored by the Ohio Restoration Project.

On April 7 the 31 pastors again wrote to the IRS citing further incidents of partisan activity and inquiring as to why no action had been taken. The group suspects the IRS is not enforcing the law even-handedly, citing an audit of a liberal California church for a sermon criticizing the war in Iraq that was delivered before the 2004 election. In the California case, All Saints Episcopal church received a letter from the IRS notifying it of the investigation in September 2005 and received a follow-up letter the next month. Church officials have not heard from the IRS since that time, although the October IRS letter said a document information request would be coming.

Law prohibits the IRS from commenting on the status of such investigations. Nonetheless, the lack of action by the IRS would appear surprising in light of new procedures, called the Political Activities Compliance Initiative. Under PACI, the IRS has said it will expedite complaints about partisan political activity. Special procedures apply in church cases, but the PACI program outlines seven steps that should take no more than 54 days. Since the complaint was sent to the IRS on January 17, some action could be expected by mid-March.

The fact that World Harvest and Fairfield Christian have not been contacted by the IRS could mean no decision on whether or not to investigate has been made, indicating that the IRS is behind on its PACI deadlines. If it means a decision to take no action has been made, serious questions about equitable application of the threshold used in the PACI program--that a "reasonable belief" that a violation has occurred exists--need to be asked.

Lobby Reform: House Moves Toward Floor Vote

House Republican leaders are weighing options to bring lobby reform to the floor after five committees reported out provisions that both Democrats and watchdog groups are calling toothless and ineffective.

Five separate committees in the House marked up their respective portions of the House GOP Leadership's lobby and ethics reform bill, H.R. 4975, on April 4 and 5. Those reporting committees were Judiciary, Rules, Government Reform, Administration, and Standards of Official Conduct, commonly known as Ethics.

The Republican bill that has emerged has largely been dismissed by both Democrats and watchdog groups as inadequate. Much of the conversation during the markups reflected the Democrats' frustration with the inadequacy of the bill and the Republicans' reluctance to allow

amendments enhancing disclosure or enforcement capabilities.

What's Next?

With all pertinent committees having finished their portions of the legislation, it is now up to Republican leaders to decide how to bring the bill to the floor. Reportedly, they are debating whether to present the bill piecemeal under a House rule that would not allow for amendments or as a large bill open to alteration. Leaving the bill open to amendments would mean difficult votes for Republicans, who do not want to be seen voting against meaningful amendments on the House floor. The GOP leadership is even considering putting parts of the bill on the suspension calendar, typically limited to non-controversial measures. Bills on suspension cannot be amended on the floor and need a two-thirds majority to pass. The bills would then be protected from amendment, but face the possibility of not garnering the two-thirds vote needed for passage.

At the same time, the GOP leadership fears that Democrats will capitalize on any effort to limit debate on the bill, saying Republicans do not want genuine change. This could be damaging in an election year. But reformers on both sides of the aisle are reportedly crafting numerous amendments to strengthen the bill. If given the opportunity, Reps. Christopher Shays (R-CT) and Heather Wilson (D-PA) will offer an amendment to create an Office of Public Integrity, reportedly similar to the language that was defeated in the Senate.

Watchdog groups have also been putting pressure on the Republican leadership to allow amendments to the bill. In an April 13 letter to House Speaker J. Dennis Hastert (R-IL) and House Rules Committee Chairman David Dreier (R-CA), six reform groups criticized the lobbying reform bill, saying they would lobby to defeat any rule to bring the bill to the House floor unless the rule allows votes on key amendments to strengthen the legislation. The improvements they seek include:

- restrictions on privately financed travel;
- charter rates for travel on corporate aircraft;
- disclosure of lobbyists' campaign donations;
- disclosure of large sums spent by professional lobbying firms on "grass roots lobbying" campaigns to stimulate public interest in legislation; and
- the strengthening of "revolving-door" rules.

Summary of Committee Action

House Judiciary Committee

The April 4 Judiciary committee markup led to few changes to the Lobbying Disclosure Act. Items approved included electronic filing of quarterly reports by registered lobbyists, instead of the current semiannual reports. The reports would be available to the public online in a free "searchable, sortable, and downloadable" database. Filing would be electronic in order to keep the database up to date. (The House recently required electronic filing but has found implementing the requirement difficult.) The threshold for filing under the Lobbying Disclosure Act (LDA) would be $2,500 spent per quarter by a lobbying firm for a client or $10,000 spent per quarter by an organization on lobbying activities. The committee approved a manager's amendment offered by Judiciary Committee Chairman James Sensenbrenner (R-WI), which included criminal penalties--up to five years imprisonment--for lobbyists and members of Congress who fail to disclose gifts and meals.

The committee also approved amendments by Reps. Maxine Waters (D-CA) and Chris Van

Hollen (D-MD). Waters' amendment, adopted by voice vote, would require lobbyists to disclose names of staff members, in addition to members of Congress, with whom they have made official contact in their lobbying activities. The Van Hollen amendment, adopted 28-4, would require registered lobbyists to disclose information on any contributions they solicited and transferred to a candidate or political committee. It would exempt contributions made by lobbyists or authorized committees of a lobbyist running for a federal office. It would also require a registered lobbyist, who serves as treasurer of a federal candidate's election committee or as treasurer or chairman of a political committee, to identify his or her position and the candidate he or she works for in a report to the secretary of the Senate and the clerk of the House.

An amendment offered by Rep. Marty Meehan (D-MA) to include disclosure of grassroots lobbying expenditures was ruled non-germane and was not considered. Meehan's amendment was identical to the provision authored by Sens. Joe Lieberman (D-CT) and Carl Levin (D-MI) now included in the Senate's lobby reform bill. Meehan's office is reportedly considering offering it as a floor amendment, should rules allow it.

Some committee Democrats, originally voting for passage, switched their vote when Sensenbrenner informed them that they were voting on reporting out the entire bill--not just the provisions the Judiciary Committee has jurisdiction over. Although Judiciary Committee Democrats agreed with the changes to the specific provisions, they opposed approving the rest of the bill when they felt it was weak in other places.

House Rules Committee

By voice vote, the Rules Committee adopted provisions to change House rules regarding gifts and travel, as well as those governing the "revolving door" between Capitol Hill and K Street, and between federal agencies and industry.

Democrats failed to gain any Republican support for amendments that would have given the minority party more power to influence conference reports and raise points of order against majority party-authored legislation.

House Government Reform

On April 5, the Government Reform Committee took up its portion of the lobby reform bill. As introduced, a provision would prohibit a member of Congress convicted of a public corruption crime and sentenced to more than a year in prison from collecting retirement benefits accrued while a member of Congress. The committee adopted an amendment by Committee Chairman Tom Davis (R-VA) to extend that provision to congressional employees and political appointees in the executive branch. Since a similar provision was approved by the House Administration Committee, it will be up to the Rules Committee to sort out differences between the two provisions before the bill goes to the floor.

The committee also approved, 32-0, a companion bill sponsored by Davis and Ranking Member Henry Waxman (D-CA) that would tighten the rules governing executive branch lobbying. The bill contains provisions that protect whistleblowers and clamps down on the growth of "sensitive but unclassified" information withheld from the public. Reportedly, both Davis and Waxman are pushing to have the bill folded into the lobbying bill on the House floor.

House Administration Committee

In the House Administration markup, the committee rejected on a 2-5 vote an amendment offered by Rep. Juanita Millender-McDonald (D-CA) that would have made it illegal for any member of Congress, delegate, resident commissioner, officer or employee of the House to knowingly accept gifts from lobbyists or agents of foreign governments. It would have also restricted those officials and staffers from accepting travel reimbursement from nongovernmental organizations that retain or employ any registered lobbyist, or agents of foreign governments.

Another Millender-McDonald amendment that would have established an Office of Public Integrity (OPI) within the House of Representatives Inspector General's office to conduct audits and investigations of all filings made by lobbyists was rejected 2-5. The office would have the authority to refer violations of the 1995 Lobbying Disclosure Act to the ethics committee and the Justice Department.

House Committee on Standards of Official Conduct

The committee, commonly known as the ethics committee, was the fifth and final committee to approve the lobby reform bill. Meeting in closed session, the committee reported out the bill with no changes.

House Votes to Regulate Independent 527s Like Campaigns, Parties

The House of Representatives passed legislation that would subject independent political committees, exempt under Section 527 of the tax code, that work on federal elections to essentially the same contribution limits and reporting requirements as federal candidate campaigns and political parties. H.R. 513, the 527 Reform Act of 2005, passed the House on April 5 by a vote of 218-209.

If the bill becomes law, 527 groups would no longer be required to report donations and expenditures to the Internal Revenue Service and would report instead to the Federal Election Commission (FEC). The legislation will now move to the Senate where it faces an uncertain future.

The House version of the lobby reform bill also contains language regulating independent 527s as political committees under FEC rules. The lobby reform bill passed in the Senate lacks such a provision. Since 527 legislation is not currently on the Senate calendar, the fate of H.R. 513 is uncertain.

H.R. 513 calls for FEC regulation of all 527 groups except for those with annual receipts under $25,000 and those that are state or local political committees that only refer to non-federal candidates or referendums in voter mobilization activities. Once subject to FEC regulation, a 527 could not receive more than $25,000 per year from any one individual for efforts to mobilize voters around issues.

The bill does not directly cover 501(c) organizations. Groups that are allowed to have affiliated 527 political committees, such as social welfare organizations and labor unions, however, would have less flexibility with funds that are not subject to FEC advocacy rules around references to federal candidates. The bill's proponents claim it is necessary to rein in groups that collected unlimited soft money contributions during the 2004 election. Conversely, its opponents claim it will unnecessarily hamper citizen involvement in elections.

Gearing Up for a May Estate Tax Vote

As the May vote in the Senate to repeal the estate tax approaches, nonprofit advocacy groups around the country are stepping up their campaign to save the nation's most progressive tax and a vital source of revenue. OMB Watch urges individuals to **email Senators today** and let lawmakers know America favors preserving the estate tax and opposes repeal or back-door "reform" that would amount to repeal.

Earlier this year, Senate Majority Leader Bill Frist (R-TN) announced his intention to bring estate tax repeal legislation to the floor for a vote in May. While full repeal is favored by a number of conservative Senators, Frist still lacks the 60 votes needed in the Senate to pass such a measure. But a proposal being pushed by conservative Sen. Jon Kyl (R-AZ) as a "reform" option could be equally damaging to federal coffers and the charitable sector. The Kyl proposal would raise exemptions from their current level of $2 million ($4 million for a couple) to $8 or $10 million for individuals and double those amounts for couples.

What's worse, Kyl's "reform" would tie the estate tax rate to the current capital gains rate of 15 percent. In the future, should the capital gains rate be reduced down to zero, as conservatives hope will happen, the estate tax would disappear. Even if the rate remained at 15 percent, tying the estate tax to capital gains would cost upwards of 90 percent of full repeal.

The Kyl proposal amounts to nothing more than back-door repeal of the estate tax. But because many in the Senate are mindful of Republican efforts to mislead and distort the issue to win elections, political survival may trump sound policy for more than a few Senators. If enough swing Senators, particularly Democrats, are fearful of being labeled as obstructionist in the lead-up to elections in November, they may support even a bad proposal like Kyl's.

Yet public perceptions and opinions on the estate tax have shifted. According to a recent national poll conducted by Penn, Schoen & Berland Associates, only 23 percent of Americans favor repeal of the estate tax, while 57 percent want to retain the tax. The number of people who want to keep it rises to 68 percent when given more information about the estate tax. The poll also found estate tax repeal is at the bottom of the list of tax policy changes Americans most want to see enacted.

The poll was released by United for a Fair Economy and the Coalition for America's Priorities at an April 11 press conference.

The lack of votes to repeal in the Senate has begun to play into the strategies of the supporters who have been working toward an end of the estate tax for years. A few weeks ago, Secretary of Treasury John Snow let slip that he would hope the Senate tried to fully repeal the tax, but in the absence of that, "come to some second-best outcome that would also be more advantageous than where we are today." Snow's comments (which were quickly clarified the next day to express the Secretary's vigorous support of full repeal) came after a number of pro-repeal organizations (the American Farm Bureau among them) amended their positions on the estate tax to include their preferences for reform - should it be necessary. As May approaches, nonprofit groups around the country working in coalition with Americans for a Fair Estate Tax and the Emergency Campaign for America's Priorities will increase ongoing efforts to preserve the estate tax, including releases of new research, grassroots mobilization through national call-in days and email campaigns, and television ad campaigns in targeted states.

We need your help!

The estate tax not only pays for vital federal services and support, but also includes an important incentive for charitable giving - both critical issues for nonprofit organizations. Email your Senators today to let them know you favor preserving the estate tax and oppose any repeal or back-door reform options.

House Fails to Agree on Budget; Boehner Retreats

After proposing a sparse budget on March 29 and following a intense and divisive few weeks of behind-the-scenes negotiations, House GOP leaders ultimately pulled the plug on the $2.8 trillion FY 2007 budget resolution late on April 6. House Majority Leader John Boehner (R-OH), who admittedly spent the week "popping Advil" in preparation for difficult negotiations with his colleagues, failed time and again to emerge from these talks with enough votes to pass the resolution--a significant setback in what was his first real test as the new Majority Leader.

Boehner attempted the difficult task during negotiations of finding a compromise that balances moderates' calls for more discretionary spending with the demands of conservatives that spending be held down. Toward such an accord, Boehner courted conservatives with promises of legislation and floor consideration for radical budget process changes. While a budget deal wasn't reached, it remains uncertain if the promises made to conservatives on budget process changes will be kept.

The failed vote, coupled with the election-shortened legislative session, increases the likelihood that Congress will not have the time or the will to agree to the harmful FY 2007 budget this year. This uncertainty was reinforced by a belief among many members that the House and Senate would not be able to reach a compromise on the budget even if the House approves its version. While the Senate passed a budget bill on March 16 that added $9 billion in discretionary spending to the overall amount requested by President Bush, the House was expected to keep discretionary levels on par with those requested by the administration--at $873 billion.

Many members saw the vote, according to *The Hill*, "as an unnecessary test during what has become a difficult stretch for the Republican Party." Because this is an election year, many members thus were wary of casting politically difficult votes in favor of a bill that would cut funding for already-strapped federal programs, especially since these cuts would likely die in conference with the Senate. The failed budget vote highlights the difficulty lawmakers often face in confronting highly-charged spending issues during important election years, as well as the increasing troubled Republican party's ability to govern.

Three Factions Too Many To Overcome

What ultimately derailed the negotiations was not a breakdown between moderates and conservatives (although that rift was far from repaired), but Boehner's move to allow a specific proposal requiring that the Budget Committee approve all non-defense emergency spending over $4.3 billion. This proposal angered Appropriations Chairman Jerry Lewis (R-CA), who then publicly stated his opposition to the budget. Lewis was subsequently able to use his sway in the committee to get other Republicans to defect, leaving the party far short of the number of votes it would need in a caucus already divided between two factions--moderates who wanted more discretionary spending and conservatives who wanted less.

A memo released by the Appropriations committee, which is often at odds with the budget committee, calls the $4.3 billion emergency cap "a threshold number plucked out of the sky" that is at least $3 billion below the 10-year average for disaster aid.

These defections proved to be a huge blow to Boehner, who is struggling to prove himself as leader of a party that has been under increasing fire of late. While tension between radical conservatives in Congress and appropriators has been apparent throughout the period of Republican majority, it came rapidly to a boiling point last month, increasing divisiveness within the party.

In late March, 29 Republicans, led by Republican Study Committee chair Mike Pence (R-IN), voted against the rule for an emergency spending bill (to fund U.S. wars) after party leaders refused to remove money from budget legislation that would go towards hurricane cleanup. The fiscal hawks, often interested in offsetting congressional spending, were hoping the leaders would allow them to consider an amendment both separating and offsetting the war and the hurricane cleanup costs. When this request was refused by the Republican leadership, support for the leadership among radically conservative members of Congress wavered.

Even if factions within the House are able to hammer out a truce and pass a budget bill, a difficult conference with the Senate still lies ahead. The Senate completed its budget work March 16, passing an FY 2007 budget plan (S Con Res 83) complete with floor amendments adding $16 billion in discretionary spending to the budget committee's markup. The Senate budget bill also includes a large emergency spending measure with items the president did not request that will certainly prove difficult to reconcile with the House.

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Federal Court Rejects Challenge to Limitations on Grassroots Broadcasts

On May 9 a federal court denied the Christian Civic League of Maine's (CCLM) request for a preliminary injunction, allowing a Federal Election Commission (FEC) rule that bans "electioneering" broadcasts to be applied to the nonprofit group. The FEC prohibits broadcast references to federal candidates 30 days before a primary or 60 days before an election. Because the injunction was rejected, starting on May 14 and lasting until June 13 (when the senate primary in Maine takes place) CCLM will be barred from airing grassroots lobbying ads urging people in Maine to contact Sen. Olympia Snowe (R-ME) and ask her to support the constitutional amendment banning gay marriage. CCLM has appealed to the Supreme Court.

The case challenges the constitutionality of the "electioneering communications" provision of the Bipartisan Campaign Reform Act of 2002 (BCRA), which is intended to stop sham issue ads funded with soft money. CCLM, a 501(c)(4) organization, filed the case on April 3, and the request for a preliminary injunction was argued before a special three-judge panel on April 24. The facts of the case are similar to those in *Wisconsin Right to Life*, which is pending in the lower court after the Supreme Court ordered it to consider whether the facts require an exemption from the rule on First Amendment grounds.

CCLM has a donor willing to pay $3,992 for a radio ad urging Maine's two U.S. Senators, Olympia Snowe and Susan Collins, to change their position on the Marriage Protection Amendment, which is expected to be debated in the Senate in June. The proposed text of the ad

states CCLM's position supporting the amendment, and goes on to say, "Unfortunately, your senators voted against the Marriage Protection Amendment two years ago. Please call Sens. Snowe and Collins immediately and urge them to support the Marriage Protection Amendment when it comes to a vote in early June." The ad then provides phone numbers to call.

The court rejected CCLM's request for a preliminary injunction, because other avenues for its message were available. CCLM could broadcast its ad if it was sponsored by an affiliated political action committee. CCLM could also publish it in a non-broadcast medium or delete the reference to Sen. Snowe.

The court's opinion raises troubling issues for groups that wish to use broadcast media for grassroots lobbying campaigns. First, the court acknowledges that the ad addresses an issue central to CCLM's mission, and "would address a legislative issue at a time when that issue is likely to be under consideration by the Senate," and that Snowe is unopposed in the election. Yet it claims the ad "appears to be functionally equivalent to the sham issue ads identified in *McConnell*." (In *McConnell v. FEC* 540 U.S. 94, the Supreme Court upheld the constitutionality of the "electioneering communications" rule. However, in the *WRTL* case the court ruled that the FEC rule could be challenged as it applies to specific fact situations.)

By applying the "electioneering communications" rule to grassroots lobbying, the CCLM court assumes that any criticism of an elected official can be regulated by campaign finance laws because it "may improperly influence the election."

The opinion says the ad might "have the effect of encouraging a new candidate to oppose Sen. Snowe, reduce the number of votes cast for her in the primary, weakening her support in the general election, or otherwise undermine her to gather such support..." It goes on to note that CCLM's newsletter comments favorably on a potential challenger to Sen. Snowe.

In all, the court finds that "the League's proposed 'grassroots lobbying' exception would seriously impair the government's compelling interest in protecting the integrity of the electoral process." As an example, the court says "candidates or their allies could easily schedule an issue for 'legislative consideration' during the run up to an election as a pretext for broadcasting a particular subliminal electoral advocacy advertisement." The argument ignores that fact that the same candidates and allies could schedule controversial legislation for votes during the 60/30 day blackout periods in order to avoid full public airing of the issues.

In addition, the court's ruling does not recognize that political committees are limited to contributions from individuals, and their primary purpose is to support or oppose candidates for office. Legitimate grassroots lobbying communications are lawful activities for civic leagues like CCLM, as well as public charities exempt under 501(c)(3) of the tax code, and can be paid for out their corporate treasury funds.

The debate on whether genuine grassroots lobbying broadcasts should be exempted from the "electioneering communications" rule is also pending in the FEC, where OMB Watch and five other groups have asked the commission to hold a rulemaking to consider the issue. The FEC has not yet decided whether it will conduct the rulemaking.

Lobby Reform Bill Squeaks Through House

A lobbying and ethics reform bill that barely passed the House last week is headed to what will likely be a contentious conference between the House and Senate, with lawmakers far from agreement on what to do about legislative earmarks, congressional travel paid by non-

governmental entities, and 527 organizations, among other issues.

H.R. 4975, the Lobbying Transparency and Accountability Act, narrowly passed on May 3 by a vote of 217-213. Eight Democrats voted for the bill despite an active whip effort by Democratic Leadership and criticism by government-watchdog groups, while 20 Republicans voted against the bill. Most of the dissenting Democrats were so-called "frontline" members--potentially vulnerable incumbents--wary that a "no" vote would be an effective element of campaign attack ads in the fall.

With House passage, the Senate and House must now name conferees to work out differences between the House bill and S. 2349, the Legislative Transparency and Accountability Act, the Senate version that passed on Mar. 29. House Speaker Dennis Hastert (R-IL), who has yet to name conferees, has said he would like to complete a conference agreement before the Memorial Day recess. Senate Majority Leader Bill Frist (R-TN) has said he intends to name conferees early this week, but the House must appoint conferees before the Senate announces its conference members.

Although Rep. Chris Shays (R-CT) remains hopeful that the Senate would prevail on any contentious conference debates, saying, "It's going to be a stronger bill thanks to the Senate," the conferees will have an uphill battle. It is unclear what provisions will survive the potentially divisive conference. Contentious provisions include:

- **Grassroots Lobbying**: In the Senate, the bill currently includes a provision that changes the trigger for registering from $24,500 in a 6-month period to $10,000 in a 3-month period. The bill also requires quarterly, electronic reporting by registered lobbyists, including disclosure of campaign contributions, gifts, and lobbyists' past congressional and executive branch employment, but does not include disclosure of expenditures for grassroots lobbying or coalitions. There is no similar provision in the House bill.
- **527 organizations**: The House package incorporates H.R. 513, which applies Federal Election Campaign Act (FECA) restrictions to independent 527 organizations so that they can no longer raise unlimited amounts of money, and eliminates restrictions on party-coordinated expenditures. There is no comparable language in the Senate bill.
- **Revolving Door**: In the House, the one year "cooling off period" remains intact; however, the Senate bill lengthens the ban to two years.
- **Gifts, Meals and Drinks**: In the House, the current $50-per-item and $100-per-year limits on gifts and meals that a member can receive from each lobbyist or organization would remain in place but would be re-evaluated by the Committee on Standards of Official Conduct. In the Senate bill, senators and aides would be barred from accepting meals or drinks from registered lobbyists, but they would be able to accept meals valued up to $50 from others.
- **Privately Funded Travel**: The House bill requires the Committee on Standards of Official Conduct to recommend new trip guidelines by June 15. Until then, travel itineraries are to be submitted to the committee for pre-approval under a two-thirds vote. After the guidelines are in place, the committee would certify trips under its standard procedures. The Senate legislation bars lobbyists from all trips. The Ethics Committee must certify that the trip was for primarily educational purposes, and the senator must submit and post a report on his or her website detailing meetings and events of the trip.
- **Earmarks**: The House would require conference reports for appropriations bills to list all earmarks and identify their sponsors, and would make any earmark not properly disclosed subject to a point of order. In the Senate bill, all bills, amendments and conference reports--whether for appropriations, tax bills, or authorizations--would have to identify the lawmaker responsible for each earmark and its purpose. The legislation would make subject to a point of order any earmark added by a conference committee to

any bill. Conference reports would be posted on the Internet at least 48 hours before a Senate vote. Both measures exempt earmarks to federal entities.

Rules Committee Chairman David Dreier will likely be on the conference committee, as he is charged with making good on a promise made to appropriators by Hastert and Majority Leader John Boehner (R-OH) that no bill will come out of conference unless it extends earmark overhaul measures beyond the annual spending bills to tax and authorizing legislation.

There is little support on the House side for a complete gift ban. In addition, extending the revolving door ban gained little traction after facing opposition from senior members, including Judiciary Committee Chairman James Sensenbrenner (R-WI), who voted against final passage of the bill. Senate Democrats are expected to fight the House-passed language that curbs 527 organizations.

The Office of Management and Budget released a Statement of Administration Policy in support of the House bill. "Strengthening the ethical standards that govern lobbying activities is a necessary step to enhance that trust and provide the public with a more transparent lawmaking process," the statement said. It went on to state the provisions in the bill addressing earmarks were necessary to help "improve the budget process and reduce wasteful and unnecessary spending."

Federal Grant Rules in the Courts

Decision Favors Charity, Another Case Challenges OMB Favoritism for Faith-Based Groups

In a victory for nonprofit advocacy rights, a sweeping restriction on the privately-funded speech of nonprofits that participate in the U.S. government's international HIV/AIDS program has been held in violation of the First Amendment. Meanwhile, a challenge is being mounted against an OMB grading system allegedly used to encourage an increase in government funding to religious charities.

Federal Court Holds "Pledge Requirement" Violates First Amendment

On May 9, a federal judge ruled that the United States Agency for International Development (USAID) violated the First Amendment by requiring public health groups to pledge their "opposition to prostitution" in order to continue receiving federal funds for their HIV prevention work. Under the USAID requirement, recipients of federal funds were forced to censor even their speech funded with privately raised dollars when discussing the most effective ways to engage high-risk groups in HIV prevention. While the court's decision applies directly only to the two organizations involved in the litigation, it could have a broad impact on many other organizations also forced to sacrifice their privately funded speech in order to receive government funds.

In his opinion, Judge Victor Marrero of the U.S. District Court for the Southern District of New York found that the Supreme Court "has repeatedly found that speech, or an agreement not to speak, cannot be compelled or coerced as a condition of participation in a government program." The court found that the pledge requirement violates the First Amendment rights of two plaintiff organizations, Alliance for Open Society International (AOSI) and Pathfinder International, by restricting their privately-funded speech and by forcing them to adopt the government's viewpoint in order to remain eligible for funds.

Marrero determined that a preliminary injunction against the enforcement of the pledge requirement was necessary to prevent AOSI and Pathfinder from suffering irreparable harm,

and asked both sides to propose the terms of the specific injunctive relief within two weeks in conformity with the ruling. The injunction will block the government from demanding the groups take the pledge while the legal case continues.

The ruling stems from a Sept. 2005 lawsuit challenging a provision in the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 that required organizations to pledge their opposition to sex trafficking and prostitution or lose federal funding. The pledge was immediately applied to foreign aid recipients, and now also affects private U.S. organizations conducting AIDS programs overseas. The plaintiffs have adopted policies acknowledging prostitution's harms but object to being told how to execute them.

A Challenge to OMB's Faith-Based "Report Card"

In related news, a lawsuit brought by the Freedom From Religion Foundation challenges the intrusion of OMB's influence in government grants. On May 4, Freedom From Religion Foundation (FFRF) filed a lawsuit charging the Office of Management and Budget with violating constitutional provisions separating church and state by using government funds to promote religion.

OMB gives a "report card" to each major federal agency--such as the Department of Education--in which OMB grades the agencies on the extent to which they have disbursed and/or increased their appropriations to faith-based organizations. It is unclear whether OMB gives report cards for secular groups applying for the same funds.

The lawsuit alleges that OMB's actions are tantamount to official support for and advocacy of religion, because they are intended to cause increased disbursements to organizations merely because they are faith-based. Report cards, by definition, measure success against a standard that agencies are expected to achieve, and according to FFRF, the grading system creates "an atmosphere intended to cause federal agencies to increase their contracting with faith-based organizations merely because the organizations are faith-based."

Closing of Muslim Charity Bank Account Causes Tension

On May 8, the Council on American-Islamic Relations (CAIR) and the Muslim American Society's (MAS) Freedom Foundation held a news conference in front of a Wachovia bank in Washington, DC, urging community members to speak out against the recent closing of a Muslim charity's accounts. The Wachovia Corporation closed the accounts of the Foundation for Appropriate and Immediate Temporary Help (FAITH) in January of 2006, despite the organization having been charged with no crime and having not even been informed of any federal investigation into its activities.

In response to the closure of the group's accounts without warning or explanation, CAIR and the MAS Freedom Foundation had planned a campaign against Wachovia that was to include protests and boycotts. According to CAIR officials, however, Wachovia recently contacted FAITH and CAIR directly to inform them that the case was being re-examined. Muslim community leaders welcomed this development, as months of discussions with Wachovia representatives had up to that point failed to change the bank's position. The campaign is on hold for the time being, as the charity and community await the outcome of this internal investigation.

FAITH is a social service organization based in Herndon, Virginia, that provides emergency aid and crisis counseling to Northern Virginia residents of all faiths. In November of last year, the group received a letter informing them that its Wachovia accounts would be closed effective

January 2006 despite its good standing as a customer. According to CAIR, bank officials failed to sufficiently explain the decision, instead writing the decision was in line with "the Bank's contract with FAITH [which] provides that the Bank can close any customer's account at any time..." (Muslims Urge Wachovia to Explain Account Closures, CAIR Press Release, May 8, 2006).

Today, leaders of the Muslim community are calling the bank's actions "heavy handed" and discriminatory. CAIR Executive Director Nihad Awad points out that "since 9/11, the American Muslim community has noticed disturbing trends within the national banking community where law-abiding American Muslims are seemingly and summarily being denied service based solely on their name, religion or ethnicity" (Muslims Urge Wachovia to Explain Account Closures, CAIR Press Release, May 8, 2006).

Jeraldine B. Davis, Wachovia senior vice president and assistant general counsel, denies that discrimination drove the decision to close the account, citing instead certain account activity that "was significantly different from that which Wachovia would expect to see in an account established for a charity" (Wachovia Bank Action Riles Muslim Activists, *The Washington Post*, May 6, 2006). However, the bank has not elaborated on what it expects to see and what the unexpected account activities were.

Current anti-terror financing legislation requires financial institutions to report suspicious activity to the Treasury Department. FAITH Treasurer Margaret Farchtchi told the *Washington Post* that a recent donation to the charity may have spark suspicion. In April 2005, the charity received $150,000, intended as an endowment, from M. Yaqub Mirza, a Northern Virginia resident. Although Mirza's home and offices were raided by federal officers in 2002, he has not been officially charged with any crime. Farchtchi argues that the "origin and purpose of the money could have been easily explained if bank officials had asked" (Wachovia Bank Action Riles Muslim Activists, *The Washington Post*, May 6, 2006). Since the bank has provided no additional information, FAITH is left to wonder what prompted the situation and what resolution if any it will find.

Dishonest Budget Gimmick Enables Passage of Irresponsible Tax Cuts

One day after the House passed the $70 billion tax reconciliation measure, the Senate passed it as well, sending the bill to President Bush for his signature. With these tax cuts, this Congress has once again proven itself to be a body determined to shirk fiscal responsibility and kowtow to the regressive, revenue-draining tax policies of this administration. And it was all made possible by a dishonest budget gimmick.

The House easily passed the bill on May 10 by a vote of 224-185 with 15 Democrats joining all but two Republicans. The House long ago approved a version of the tax reconciliation bill centered on extending lower rates of capital gains and dividends.

The extension of these rate reductions that largely benefit the wealthy has been far less popular in the Senate, which even initially passed its version of the tax cut bill without including the capital gains and dividend rate cut extensions. Instead, the Senate focused on tax cuts that primarily benefit upper-middle income Americans, such as adjusting the Alternative Minimum Tax.

When it came time to actually pass the measure, however, the senators caved on the capital gains and dividends issue, appearing to conveniently forget their original misgivings. Three Democrats - Sens. Bill Nelson (D-FL), Ben Nelson (D-NE), and Mark Pryor (D-AR) - voted along

with most Republicans for the bill. Three Republicans - Sens. Olympia Snowe (R-ME), Lincoln Chafee (R-RI), and George Voinovich (R-OH) - crossed the aisle to vote with Democrats.

Voinovich expressed his dissatisfaction with current fiscal policy as embodied by the reconciliation bill during a May 3 floor speech, reported on by the *Washington Post*. Voinovich told colleagues,

> "Some members believe that the solution is to grow the economy out of the problem, that by cutting taxes permanently, the economy will eventually raise enough revenue to offset any current losses to the U.S. Treasury. I respectfully disagree with that assertion... In November 2005 former Federal Reserve chairman Alan Greenspan testified before the Joint Economic Committee and told Congress: 'We should not be cutting taxes by borrowing'... Instead of making the tax cuts permanent, we should be leveling with the American people about the fiscally shaky ground we are on."

Voinovich finished with a bold call to action following an astute characterization of our current fiscal challenges: "I have to say this, and I know it is controversial, but if you look at the extraordinary costs that we had with the war and homeland security and Katrina, the logical thing that one would think about is to ask for a temporary tax increase to pay for them. Did you hear that? Ask for a temporary tax to pay for it, instead of saying we will let our kids take care of it; we will let our grandchildren take care of it."

Unfortunately, this entire bill was enabled to pass because Republicans allowed the use of an egregious gimmick used to circumvent Senate budget enforcement rules. Under the rules of the reconciliation bill, lawmakers could not reduce federal tax revenues by more than $70 billion, if the measure were to receive expedited consideration. In order to meet the revenue target while including the full scope of desired tax cuts, senior Republican tax writers included a provision that unnaturally inflates short-term revenue, by allowing taxpayers to convert an unlimited amount of money from an IRA to a Roth IRAs starting in 2010.

Howard Gleckman summarized this provision on BusinessWeek.com, saying it "promises wealthy people that they'll be able to convert their standard Individual Retirement Accounts into Roth-type IRAs. This would be an incredibly sweet deal, since retirees can withdraw money from a Roth IRA entirely tax-free. That can be much better than regular IRAs, where investors must pay tax on distributions, even after retirement."

The Joint Committee on Taxation has estimated that this provision will raise $6.4 billion during a 10-year budget window. The real problem, however, as the independent Tax Policy Center recently pointed out, is that "the Treasury starts losing revenue in fiscal year 2014," and "the revenue loss grows in nominal terms until 2046. In present value, the government loses over $14 billion over the long term due to the conversions from existing IRAs, even though the provision *appears* to raise $8.6 billion in the budget window."

This budgeting gimmick is little more than smoke and mirrors. The "revenue raiser" is in fact a long-term revenue loser for the government.

The overall result is a tax reconciliation bill, as the Center on Budget and Policy Priorities succinctly stated, that "relies in large part on budget gimmicks and timing shifts to create the appearance that it is complying with a key Senate budget rule that bars the reconciliation bill from increasing the deficit in any year after 2010."

These tax cuts - made possible only through shady budget maneuvering and compromising politicians - are clearly not in the best interest of the nation or of the average American taxpayer. Unfortunately, Congress has chosen to embrace fiscally-reckless policies that will increase

deficits substantially, benefit the very wealthy almost exclusively, and continue to force the nation down a dangerous fiscal path.

Fed. Board Report Underscores Estate Tax's Importance

Congressional Republicans are preparing to add to the federal debt by pushing through more tax cuts for the super-rich after just pushing through a $70 billion tax cut that mostly benefits the wealthy. When the Senate resumes work after Memorial Day, Senate Republicans will once again take up their assault on the estate tax, a tax levied solely on the wealthiest Americans. Senate Majority Leader Bill Frist (R-TN) remains committed to repealing the dynasty tax despite mounting evidence against repeal, the most recently of which being a report by the Federal Reserve Board (FRB) finding that during a 15-year period ending in 2004 "there was a shift in favor of the top of the [wealth] distribution."

The report traces the distribution of wealth among Americans from 1989 to 2004 and shows that over that time the rich have become richer while the poor have lost ground. As the wealthiest 1 percent of Americans saw their share of the country's wealth increase from 30.1 percent to 33.4 percent over the time period, the poorest 50 percent watched their share of wealth decline from 3.0 percent to 2.5 percent. In addition to the troubling wealth trend, the FRB report indicates that a staggeringly large majority of business assets (88.7 percent), bonds (93.7 percent), and nonresidential real estate (71.7 percent) are owned by the wealthiest 5 percent of Americans.

Repeal of the estate tax would further skew wealth accumulation toward the richest Americans allowing even more accumulated wealth to pass within the same families from generation to generation, out of reach of the 90 percent of Americans who collectively own less than the wealthiest 1 percent.

A repeal of the estate tax would be an enormous windfall for the richest families in America. Indeed, Public Citizen and United for a Fair Economy in the recent report entitled *Spending Millions to Save Billions* reported that those who would gain the most from an estate tax repeal have funded, from behind the scenes, the campaign for repeal. Since 1998, a "handful of super-wealthy families" have spent some $400 million on lobbying efforts to repeal of the estate tax.

As reported in March in *The Watcher*, income inequality is on the rise even in the midst of strong GDP growth. The repeal of the estate tax is just another wedge to further separate the super-rich from the middle class.

At the same time repeal of the estate tax would continue to widen America's enormous wealth gap and drastically reduce government revenue, further hampering its efforts to maintain and expand an American middle class. A recent commentary by Sebastian Mallaby in the *Washington Post* makes a powerful argument that extreme tax cut policies, such as repealing the estate tax, amount to nothing more than "voodoo economics" and are incredibly dangerous to our nation's fiscal health.

Mallaby points out that former Bush administration chair of the Council of Economic Advisors, N. Gregory Mankiw and Douglas Holtz-Eakin, a former Bush administration economist and head of the Congressional Budget Office, along with a number of other economists, have repeatedly averred that tax cuts do not pay for themselves. "Ignoring their solutions is like ignoring the judgment of medical science in favor of faith healers and quacks," according to Mallaby.

House Fails to Pass Budget Again--Approps Move Forward Just the Same

House Majority Leader John Boehner (R-OH) once again failed to bring the budget resolution to the floor last week despite rumors and rumblings from the GOP leadership that passage of the bill was imminent. Having reached a compromise with Appropriations Committee Chairman Jerry Lewis (R-CA), Boehner was still unable to garner enough support from within the Republican caucus to hold a vote. Considering the difficulty of finding agreement in conference with the Senate at this late date, passing the resolution is now bordering on pointless anyway.

Boehner and House Speaker Dennis Hastert (R-IL) spent much of last week in private meetings with moderate Republicans building support for the resolution. The ad-hoc group of about 15 moderates led by Reps. Mike Castle (R-DE) and Nancy Johnson (R-CT), have pushed for an increase of around $7 billion in funding for education and health programs from discretionary spending capped at $873 billion. Such an increase would put the House budget resolution spending levels more in line with a Senate-passed version and would be the minimum increase needed to hold even with inflation.

In order to win the moderates' support for the budget, Boehner and Lewis agreed last week to shift $4.1 billion from defense accounts to the Labor-Health and Human Services appropriations subcommittee total, thereby keeping the overall discretionary spending cap in place. The moderates, however, refused to back down from the $7 billion increase. So ongoing debate is now focused on where the other $3.1 billion called for by the moderates will come from. If the GOP leadership will not increase the discretionary spending ceiling and will not increase taxes, it will have to play a shell game of moving money from other spending categories. Various budget gimmicks have also been suggested to alleviate the spending crunch - such as an option used by the Senate called "forward funding programs," but such gimmicks are apparently unacceptable to the moderates, as well as many conservatives.

"We just haven't gotten to a point of agreement," commented Castle.

Yet Boehner and other GOP leaders remain committed to passing the budget. "We're still working on it," said House Budget Committee Chairman Jim Nussle (R-IA). "We want a good, strong budget, and are willing to be patient to get it."

During his announcement last week that consideration of the resolution would be postponed again, Boehner told fellow representatives, "there's a lot of goodwill in the [negotiation] room. When we think we have the votes, we'll bring it up." As previously reported, attempts to pass a budget at this stage are motivated more by political survival instincts than anything else. The House has succeed in passing its budget resolution every year since the Congressional Budget Act was enacted in 1974 and failing to so this year would add to ammunition to the arsenals of challengers to Republican incumbents.

Appropriations Move Ahead Quickly Despite No Budget

Even as budget negotiations remain stymied, the House Appropriations Committee has quickly moved forward with the appropriations process, making passage of the resolution an afterthought. On May 9, the Appropriations Committee approved total spending targets, also called 302(b) allocations, for each of the appropriations subcommittees. These allocations were originally sketched out by Chairman Lewis on May 4, allowing appropriations subcommittees to begin work on their respective bills. Three subcommittees - Agriculture, Interior-EPA, and Military Construction-VA - held markups of their appropriations bills last week, and Lewis

hopes to bring all three of the bills to the House floor this week for consideration.

Update: Boehner Makes Sunset Commission Proposal Legislative Priority

House of Representatives Majority Leader John Boehner (R-OH) has begun work behind the scenes to draft new sunset commission legislation and has signaled to his party that the sunset commission will be a legislative priority.

In conjunction with House Republicans agreeing to a broad "vision" statement on May 10, Boehner released a list of legislative priorities, including passing legislation to create a sunset commission, according to *The Hill*. The sunset commission proposals seek to create a single unelected commission to review federal programs and recommend which should be axed. (Read more about sunset commission proposals.)

At the same time, BNA's *Daily Report for Executives* (subscription-only) reports that Boehner has been working with House Republicans to craft new sunset commission legislation, combining elements from the three sunset commission proposals that have been put forward in the 109th Congress. Elements likely to end up in the final bill include the following:

- Forcing programs back on the sunset commission treadmill every 10 years -- thus reopening debates about the continued necessity of long-standing, successful government programs, including those protecting civil rights, the environment, auto safety and more;
- Fast-tracking commission recommendations for program termination and reorganization through Congress with constrained debate and no opportunity for amendment; and
- Exempting the unelected commission from open government law.

Proposals creating a commission to review and sunset federal programs have circulated in the past but never seriously advanced. In the 109th Congress, the concept gained some steam after the White House released its own proposal for sunsets and reorganization authority. The issue accelerated during negotiations over the House budget resolution. The Republican Study Committee demanded, and House leaders conceded to, guaranteed floor consideration of sunsets as one of the conditions for securing its members' votes on the budget.

While the budget resolution has stalled, this new intelligence indicates that passing a sunset commission proposal remains a legislative priority for House leaders, and a floor vote on sunsets is still expected in June.

Read OMB Watch's latest analyses of sunset commissions:

- The sunset commission would promote more cronyism in Washington.
- The sunset commission threatens the constitutional separation of powers.

Congress Could Save TRI from EPA's Chopping Block

Congress is expected to vote on an amendment this week that would save the Toxics Release Inventory (TRI) from changes the Environmental Protection Agency (EPA) proposed in September 2005 and expects to finalize this December. The Pallone-Solis Toxics Right to Know Amendment to the Interior Appropriations Bill would prevent the EPA from spending money to

finalize the proposals. The amendment is welcome news to environmental, public health, first responder, and labor groups, who have mounted a campaign to compel the EPA to drop its plans to reduce information on toxic pollution.

Reps. Frank Pallone (D-NJ) and Hilda Solis (D-CA) will introduce the Toxic Right-to-Know amendment to prevent the EPA from spending money on implementing the changes. The agency has proposed rules that would change the reporting frequency and increase the threshold amount of TRI chemical releases under which industry need not submit detailed reportd to the EPA. The agency has also proposed collecting TRI pollution reports every other year, instead of the annual submissions that have occurred for nearly 20 years. The Pallone-Solis amendment would essentially force the process of implementing the proposed changes to grind to a halt, at least until the next budget cycle.

Stakeholders across the country use TRI data to monitor the storage, release, transfer, and disposal of toxic chemicals. First responders use the TRI to plan for emergencies and disasters. Public health officials rely on TRI data in their research on cancer, Parkinson's disease, respiratory diseases, and other ailments associated with chemical exposures.

Just last week, the Political Economy Research Institute at the University of Massachusetts used data drawn from sources including the TRI to identify the top one hundred corporate polluters in the United States in its *Toxic 100.* The study goes beyond exclusively analyzing TRI data that reveals total pounds of pollution released by a facility and totals for geographic areas. The study seeks answers to the larger question of 'which company's pollution contributes most to harming people and the environment?' The report also analyzes census and toxicity weight data, and matches individual facilities to their corporate parent.

The top ten corporate air polluters according to the study are:

1. E. I. Du Pont de Nemours & Co.
2. United States Steel Corp.
3. ConocoPhillips
4. General Electric Co.
5. Eastman Kodak Co.
6. Exxon Mobil Corp.
7. Ford Motor Co.
8. Tyson Foods Inc.
9. Alcoa Inc.
10. Archer Daniels Midland Co. (ADM).

Table of all 100 companies

According to the report, while providing vital data, TRI also has several limitations:

- The data for each chemical release is reported in total pounds without taking into account differences in toxicity. Some chemicals are much more hazardous than others.
- Neither does it include information on the number of people affected.
- The data is reported on a facility-by-facility basis, without combining data for plants owned by one corporation in order to get a picture of overall corporate performance.

The Toxic 100 index analyzes TRI data along side other information to overcome these three limitations.

If the EPA implements the changes it proposed last year, reports like the Toxic 100 will become more difficult to produce and less reliable. The Pallone-Solis Toxics Right to Know Amendment,

by stopping these changes in their tracks, will help preserve the TRI program and this important informational resource it provides.

OMB Watch has an online action alert that allows users to send messages to their Representatives on this issue.

Playing Politics with Government Contracts

Secretary of Housing and Urban Development (HUD) Alphonso Jackson suggested at a forum in Dallas that federal contracts would not be awarded to those who have political disagreements with President Bush. He described a meeting with a contractor that was about to receive federal money until the contractor expressed his disapproval of the president. Jackson has since told reporters that he made the story up and that federal contracts are not awarded on the basis of political ideology. Regardless of the veracity of the anecdote, however, it highlights the lack of transparency around the connections between politics and government contracts.

The *Dallas Business Journal* reported that on April 28,at a meeting of the Real Estate Executive Council, a national minority real estate consortium, Jackson told of an advertising contractor that was on the verge of receiving a federal contract from HUD. Jackson said the contractor was trying to get a HUD contract for 10 years, that he "made a heck of a proposal," and the company was on the approved list of contractors with the General Services Administration. "So we selected him."

But during a meeting planned in order to thank Jackson, the prospective contractor commented on his disagreement with President Bush's politics. According to Jackson: "I said, 'What do you mean?' He said, 'I don't like President Bush.' I thought to myself, 'Brother, you have a disconnect -- the president is elected, I was selected. You wouldn't be getting the contract unless I was sitting here. If you have a problem with the president, don't tell the secretary.'"

According to Jackson, the contract was rescinded, putting his explanation to the audience, "Why should I reward someone who doesn't like the president, so they can use funds to try to campaign against the president? Logic says they don't get the contract. That's the way I believe."

Following up with a reporter from the *Dallas Business Journal*, Jackson's spokesperson, Dustee Tucker, added that the contract Jackson was referring to in Dallas was "an advertising contract with a minority publication," though she could not provide the contract's value. In other reports, Tucker indicated that the contractor had been rude and that had been the main reason for denying the contract. For instance, she told the Dallas Morning News that the contractor had been "trashing, in a very aggressive way," the HUD secretary and the president.

Several legal experts immediately noted that Jackson's actions may have violated federal law. Under the Federal Acquisition Regulations, "Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none." The meeting itself is questionable, as it is highly unusual for political appointees to be meeting with contractors during the reviewing process.

Reactions to Jackson's cautionary tale were swift and severe. House Government Reform Committee Ranking Member Henry Waxman (D-CA) and Financial Services Committee Ranking Member Barney Frank (D-MA) immediately wrote to Jackson, requesting all documents relating to the contract and meeting in question, as well as documents related to any contracts personally overseen or reviewed by Jackson. A follow-up letter has since been sent by the representatives to Jackson, questioning the veracity of his statements and reiterating their

request for documents. Sen. Frank Lautenberg (D-NJ) has called for Jackson's resignation.

HUD Inspector General Kenneth M. Donohue is apparently investigating Jackson's comments. "We have received a number of complaints from the public as well as from members of Congress," Michael Zerega, spokesperson for Donohue, told reporters. The spokesperson indicated, however, that "[t]here is no timetable for the inquiry."

Then, to the surprise of many, Jackson apologized for his comments and stated that he made the story up, and Bush has since given Jackson his full support. "Alphonso Jackson has admitted that what he said earlier was improper, that it was a mistake, and the president accepts that and still supports a man with whom he's had a long and close relationship," according to White House press secretary Tony Snow.

Not only is Jackson now claiming he made the story up, but Tucker, who seemed to know details about the incident, now claimes the story in the Dallas speech was purely "anecdotal."

"He was merely trying to explain to the audience how people in D.C., will say critical things about the secretary, will unfairly characterize the president and then turn around and ask you for money," Tucker told reporters. "He did not actually meet with someone and turn down a contract. He's not part of the contracting process."

The Washington Post summed up the concerns of many in a hard-hitting editorial on May 12, asking, "Which is worse, violating the law or pretending to have done so?"

Even if the story was made up, the Post went on to criticize the "veiled threats" it contained: "Either Mr. Jackson broke the law and then lied about it, or he lied that he had broken the law. Which of those actions makes him fit to be secretary of housing and urban development?"

Sunlight Foundation senior fellow Bill Allison went still further, pointing out Jackson's questionable behavior as a Texas state official and the role he played in the awarding of financial assistance.

Regardless of whether Jackson should resign or be fired for either his violation of contract awards rules or lying about it, the incident demonstrates the need for public interest groups and journalists to track connections between government contracts and political decisions. In theory, if contractors follow the same rules, all will have the same chance to prevail. By refusing to award contacts or grants based on political leanings or position, the administration appears to be attempting to silence public debate on important issues and ultimately chill the speech of its opposition.

One important step toward ensuring a level playing field for all contractors and grantees is through increased transparency. As previously reported in *The Watcher*, an amendment co-sponsored by Sens. Tom Coburn (R-OK) and Barack Obama (D-IL) would require the Office of Management and Budget to create a free online database that the public could search for contracts and grants by a number of criteria, including company, agency, dollar amount, and geographic region.

The Coburn-Obama amendment represents a comprehensive, uniform approach toward opening the spending habits of our government to public scrutiny. Given the recent HUD debacle, such oversight is long overdue.

NSA Caught Spying Again

The National Security Agency (NSA), it was recently revealed, has been secretly amassing the largest database ever created on the telephone calling habits of millions of Americans. News of the data mining program comes as the NSA program of eavesdropping on international telephone calls without warrants remains unresolved, continuing to draw consternation and at times furor from both Congress and the public.

USA Today reported on May 11 that the NSA is collecting call records from the databases of Verizon, AT&T, and BellSouth through established agreements with the telecommunications companies. Information collected includes call records, which is to say every number dialed and the time and duration of each call, but apparently not the content of the calls. The program's scope far exceeds that of the NSA spying program previously disclosed by *The New York Times*, which supposedly only includes U.S. calls made to and from foreign countries.

President Bush immediately defended the program and maintains that the government "isn't mining or trolling through the personal lives of millions of Americans." The information in the NSA database does not concern the content of the phone conversations nor does it contain personally identifiable information, but experts note that match identifying information to the calling data would not be difficult.

Congress will have its first opportunity to ask tough questions about the program during General Michael Hayden's confirmation hearing before the Senate Intelligence Committee on Thursday. The president has picked Hayden, who headed the NSA from 1999 to 2005, to be the next director of the Central Intelligence Agency (CIA).

Meanwhile Sen. Arlen Specter (R-PA), chairman of the Senate Judiciary Committee, promised to hold hearings on the secret program. Specter stated his intention to "call executives from the telephone companies to testify before Congress about the relationship with the NSA and what sort of data was provided."

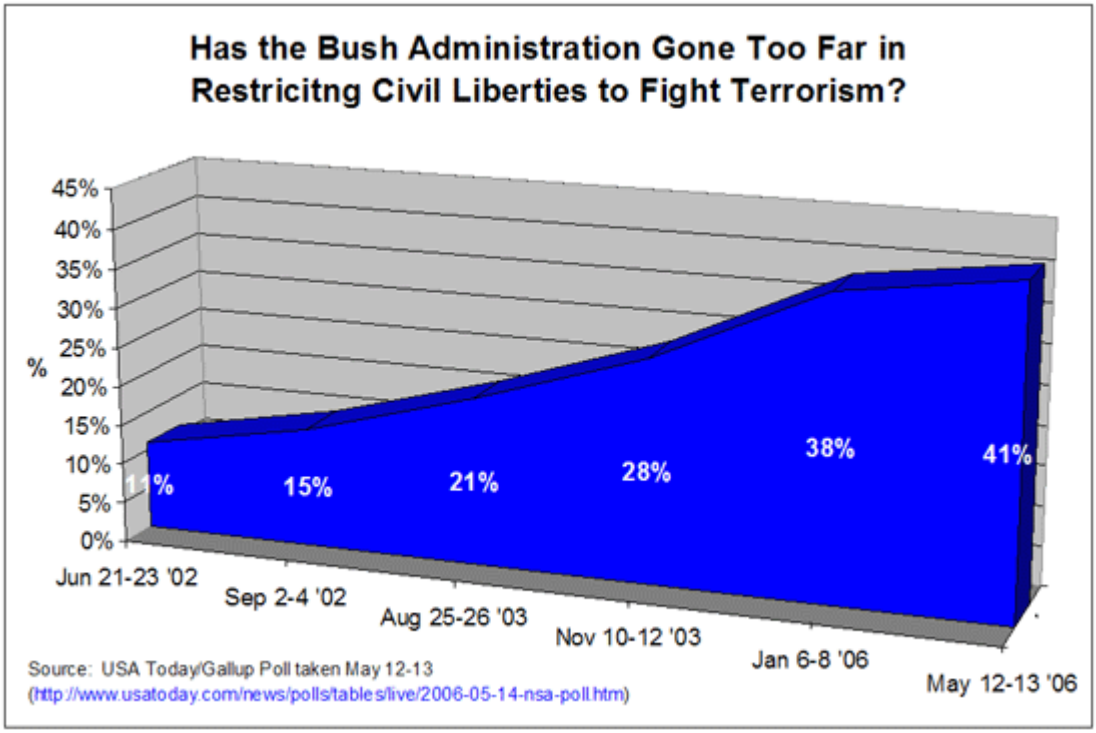
The House of Representatives has also responded to the news. House Democrats introduced the Lawful Intelligence and Surveillance of Terrorists in an Emergency by the NSA (Listen Act) that would require the NSA to comply with the Fourth Amendment and the Foreign Intelligence Surveillance Act (FISA). The Listen Act mandates that any covert spying program, including those that collect the telephone or email records of Americans, must receive formal approval from the FISA Court--a secret court that regularly meets in Washington to issue warrants related to national security.

At the moment, the legality of the newly revealed NSA program remains a matter of great controversy. One of the major telecommunications companies approached by the NSA refused to participate in the spying program, underscoring questions of its legality. Qwest Communications refused to cooperate with the data mining program due to concerns it had about the program's legality and about how widely the information would be shared. According to *USA Today*, Qwest was told that the NSA regularly shares its information with the Federal Bureau of Investigation, the Central Intelligence Agency, and the Drug Enforcement Agency.

The NSA program is assumed not to be in violation of the Fourth Amendment's protection against unreasonable searches and seizures due to a Supreme Court precedent that no reasonable expectation of privacy for call detail records exists. According to legal experts, however, the program may violate communications statutes that govern the release of such records. A lawsuit was brought against Verizon on Friday for $5 billion, claiming that Verizon violated the Telecommunications Act. Other lawsuits are expected to be filed against the other

telecommunications companies who shared call information with the NSA.

On May 14, *USA Today* also released a poll of 809 adults taken May 12-13 that indicates a 51 percent disapproval rating of the program, with 62 percent of those polled supporting immediate congressional hearings into the matter. Accoring to the poll, two-thirds of Americans are concerned that the government would misidentify innocent people as terrorist suspects (65%), that the government will listen in on telephone calls without a warrant (63% with 41% very concerned), and that the government is gathering information on the general public, such as bank records or Internet usage (67% with 45% very concerned).



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Battle Brewing on How to Track Contract and Grant Bucks

Two bills may soon face off in the Senate on how best to provide the public with information on how the government spends taxpayer dollars.

On April 6, Sens. Tom Coburn (R-OK), Barack Obama (D-IL), Tom Carper (D-DE) and John McCain (R-AZ) introduced the Federal Funding Accountability and Transparency Act (S. 2590). The bill requires the Office of Management and Budget (OMB) to make information on federal contracts and grants publicly accessible through a free, searchable website. Meanwhile, the "Website for American Taxpayers to Check and Help Deter Out-of-control Government Spending Act" (S. 2718), called the WATCHDOGS Act, offered by Sen. John Ensign (R-NV) advertising itself as a similar effort has been introduced. The WATCHDOGS Act would establish an imbalanced set of reporting requirements, with grantees required to report more information than contractors.

Legislation to increase transparency for federal contracts and grants is needed because the public currently lacks access to timely, accurate information about individual contracts, grants, and other forms of government financial assistance. While the Federal Procurement Data System (FPDS)--Next Generation, provides public access to some information on government contracts, it has been widely criticized for its inadequacies. The Census Bureau also provides more complete information about other forms of

federal financial assistance through the Federal Assistance Awards Data System (FAADS). Unfortunately, though, the system is not searchable.

The Census Bureau also publishes an annual Consolidated Federal Funds Report (CFFR), which puts together information from the FPDS-NG, FAADS, and other sources of information to provide summary data about federal spending. For example, using the CFFR you can learn that, in FY 2004, federal government expenditures can be broken down as follows:

Category	Amount (in billions)	Percentage
Retirement & Disability	$667.0	30.8%
Other Direct Payments	$469.8	21.7%
Grant Awards	$460.1	21.3%
Procurement Contracts	$339.7	15.7%
Salaries and Wages	$225.6	10.4%

The CFFR does not provide information about individual contracts and grants, however, so data can not be sorted to reveal trends in government spending or to suggest ways to foster greater government accountability. The necessity of public access to information in this form was apparent in the aftermath of Hurricane Katrina, when tracking government spending on reconstruction proved nearly impossible. At the time, more than 50 organizations joined OpenTheGovernment.org in signing a letter calling on President Bush to put all information about Katrina-related spending on the Internet.

The Federal Funding Accountability and Transparency Act responds to this situation by requiring the Office of Management and Budget to ensure that the public has access free of charge to a searchable website providing information on federal financial assistance, including federal contracts, by Jan. 1, 2007. The website would allow the public to search for information about individual contracts, grants, loans, and other forms of financial assistance, including by name of company or organization, amounts, year, the place of performance, congressional districts, federal program, and more. Information would be posted to the website no later than 30 days after the financial award. The website would not contain details about credit card transactions or minor purchases. Beginning Oct. 1, 2007, the bill requires the disclosure of subcontracts and subgrants. How the OMB will implement the disclosure of subcontracts and subgrants is uncertain, since there is no established method for collecting it.

While the WATCHDOGS Act also requires OMB to ensure that there is a searchable website allowing public access to information provided by contractors and grantees about the federal funds they receive, the bill discriminates against grantees by requiring more stringent reporting requirements. For instance, under the bill, federal grantees must disclose the name, address, and social security number of each officer and employee earning more than $50,000 per year, as well as directors of the organization. Contractors need not disclose similar information. Additionally, the bill calls for disclosure of expenditures on various activities including lobbying and, oddly, *decorating* by federal grantees, but would not require it of contractors. The bill appears less focused on accountability and more on creating a hostile environment for federal grantees, who tend to be nonprofit organizations.

Also problematic, the WATCHDOGS bill would federalize a contractor or grantee if the

entity receives 10 percent of its business expenditures or annual budget from federal funds. In doing this, the contractor or grantee would be subject to the Freedom of Information Act (FOIA) and to laws that apply to government employees regarding travel, such as the allowable per diem for housing and meals or mileage allowances.

For more information on key components of both bills, see OMB Watch's analysis.

Coburn and Obama initially sought to attach their bill to lobby reform legislation, but the amendment was rejected at the last second as non-germane. Joined by Carper and McCain, the four co-sponsors now hope to move the bill either as free-standing legislation or as an amendment, possibly to budget reform legislation expected to move in the Senate this summer. As a first step, the Homeland Security and Governmental Affairs Committee, where Coburn chairs a key subcommittee, will likely mark-up the bill in June. The WATCHDOGS Act lacks the bipartisan support of the Coburn-Obama-Carper-McCain bill; it's not structured as a neutral government accountability bill.

House Passes Right-to-Know Amendment to Save TRI

On May 18, the U.S. House of Representatives voted to prevent the Environmental Protection Agency (EPA) from rolling back reporting requirements for our nation's worst polluters. By passing the Pallone-Solis Toxic Right-To-Know Amendment to the Interior Appropriations Bill, the House took an important step to preserve EPA's Toxics Release Inventory (TRI) program, by prohibiting the agency from spending any money to finalize its plans to cut toxic chemical reporting requirements.

In September 2005, EPA proposed changes to the TRI that would let thousands of large industrial facilities stop reporting their pollution emissions. The proposals would cut off public access to vital health and safety data that are used by emergency planners, community groups, researchers, and medical professionals.

The amendment, introduced by Reps. Frank Pallone (D-NJ) and Hilda Solis (D-CA), was objected to by Rep. Todd Tiahrt (R-KS) who claimed that EPA's proposed rollbacks were needed to relieve small business of the expensive task of reporting. After the objection Rep. Charles Taylor (R-NC), who chairs the Interior and Environment Appropriations subcommittee, accepted the amendment with the understanding that EPA would work to reduce reporting burden on small business that had no or very small releases. After what appeared to be an affirmative voice vote, Rep. Mike Pence (R-IL) objected and called for a roll call vote. The vote was postponed until later in the evening when the amendment passed by a wide margin of 231 to 187. Forty-eight Republicans voted with 182 Democrats and one Independent in support of the amendment, while 15 Democrats voted with 172 Republicans against it.

More than 113,000 public comments to EPA, thousands of emails and calls to Congress, a May 17 letter to members of the House from 196 organizations, and testimony from public health professionals and emergency responders, all played a role in compelling the House to vote against EPA's scheme to relax reporting standards.

"Lawmakers have sent a clear message to the EPA that they and their constituents value the public's right to know about toxic pollution," stated Sean Moulton, director of

federal information policy for OMB Watch. "The EPA's attempts to rollback reporting on toxic pollution are unacceptable to so many Americans and their representatives have expressed that with their vote."

A May 17 report by the Commission for Environmental Cooperation (CEC) also underlies the need for more, not less, information on toxic chemical releases. The report, "Toxic Chemicals and Children's Health in North America," focuses on children's exposure to cancer-causing industrial chemicals and pollutants. The report is based on data collected under the TRI program and its Canadian counterpart, the National Pollutant Release Inventory.

The CEC, an international organization made up of Canada, Mexico and the United States, was created under the North American Free Trade Agreement (NAFTA) to address regional environmental concerns, help prevent potential trade and environmental conflicts, and promote the effective enforcement of environmental law.

"More monitoring of toxic chemical releases and exposures" is among the top recommendations made in the report. This particularly important to protecting children who "are uniquely vulnerable to many environmental threats," according to the U.S. State Department's Bureau of International Information.

Now the fight to save the TRI will move to the Senate, where interest in this issue has been ongoing. A bipartisan letter from Sens. Frank Lautenberg (D-NJ), Jim Jeffords (I-VT), and Olympia Snowe (R-ME), for instance, was sent to the Government Accountability Office, requesting an investigation into whether EPA had adequately considered the impacts of reduced TRI data on communities and data users, including federal and state programs. Additionally, the same day the House voted to suspend funding for EPA's efforts to reduce TRI reporting, the Senate Committee on Environment and Public Works held a confirmation hearing in which the issue was repeatedly raised. Molly O'Neill has been nominated to be EPA Assistant Administrator for the Office of Environmental Information, which oversees the TRI program. Several Senators asked O'Neill about the EPA's proposals and expressed great concern over the potential loss of information on toxic pollution. O'Neill voiced her strong support for the program but could not provide any details on the proposals as she has been part of their development.

The Senate may take up the Interior Appropriation bill, which sets EPA's budget, sometime in late June. If a similar right-to-know amendment is attached to the Senate Interior Appropriations bill, a measure to prevent EPA from spending money to finalize its planned reporting changes would almost certainly become law.

NJ Report Highlights Need for Chemical Safety Requirements

A chemical catastrophe at any one of six New Jersey facilities could seriously injure or kill nearly one million people living in the area, according to a May 23 report by the New Jersey Work Environment Council (WEC). The report, Safety & Security First: Protecting Our Jobs, Families, and Hometowns from Toxic Chemical Disaster, concludes that chemical plant security must become a top priority for federal and state

lawmakers.

New Jersey is home to 110 facilities that have the potential to harm thousands of residents in the event of an accidental or terrorism-related worst-case chemical release. A worst-case chemical release from the most hazardous of these facilities, the Kuehne Chemical Company, located in Hudson County, could harm up to 12 million people in New Jersey and New York City.

In the more than four years since the Sept. 11 terrorist attacks, the government has conducted a review of potential infrastructure vulnerabilities across the country, but has failed to act to remove these hazards from densely-populated areas. Currently, no federal law or regulation requires hazardous chemical facilities to review or use readily available alternatives to hazardous chemicals.

Several federal lawmakers have introduced bills that would encourage facilities to use inherently safer technologies to reduce vulnerabilities:

- The Community Water Treatment Hazards Reduction Act of 2006 (S. 2855), introduced by Sens. Joseph Biden (D-DE), James Jeffords (I-VT) and Barbara Boxer (D-CA), would require high risk water facilities to choose among safer technologies to eliminate hazards posed by chlorine and sulfur dioxide gas. The bill currently has two cosponsors.
- The Chemical Security and Safety Act of 2006 (S. 2486), introduced by Sens. Frank Lautenberg (D-NJ) and Barack Obama (D-IL), would require chemical facilities to thoroughly review and use safer technologies where practicable. The bill currently has six cosponsors.
- The Chemical Facility Anti-Terrorism Act of 2005 (S. 2145), introduced by Sens. Susan Collins (R-ME) and Joseph Lieberman (D-CT), would require high-risk facilities to develop vulnerability assessments, site security plans, and emergency response plans. Unfortunately, the bill fails to require any reporting on the use of safer technologies. The bill currently has five cosponsors.

The WEC report acknowledges the hundreds of New Jersey facilities that have moved to safer chemicals. Many of the state's wastewater treatment facilities have either eliminated or significantly reduced their use of potentially lethal chlorine gas since 1988. Some progress on the national level toward safer technologies was reported on in last April's report Preventing Toxic Terrorism from the Center for American Progress that found approximately 284 facilities in 47 states had reduced risks to nearby communities from hazardous chemicals by switching to safer chemical processes or moving to safer locations.

Many experts point out the need for a national program to encourage chemical facilities to become safer neighbors through the use inherently safer chemicals and technologies. A concerted national effort to convert high-risk facilities to safer chemicals and processes could protect millions of Americans. Effective chemical security legislation must also include public accountability provisions, so workers and fence-line communities can ensure that they are being protected.

Treasury Will Revise Anti-Terrorist Financing Guidelines

A Treasury Department official, speaking at a gathering of attorneys, announced that the department is revising its Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities, based on public comments submitted last February. According to the official, the revisions are undergoing review and the department hopes to release them soon. This will be the third version of the Guidelines, since their release in November 2002; earlier versions have been criticized for hindering legitimate charity work.

The guidelines were first revised on Dec. 5, 2005. On May 5, at an American Bar Association panel on international charitable activities, Andrea Keller of the Terrorist Financing & Financial Crimes division of the Treasury Department summarized the expected changes, as follows:

- A statement will be added to the Introduction clarifying that non-compliance with the guidelines is not a violation of any law and that Treasury's best practices are not exhaustive or comprehensive.
- A lengthy footnote will explain Treasury's assertions about the danger of diversion of funds to terrorists from charities. (Charities filing comments to the previous version objected to Treasury's characterization of the extent of such diversion.) Keller said Treasury's position is justified because 41 of the 430 entities/persons on their Specially Designated Nationals list are charities, and 10 percent is significant. Five of the 41 charities are U.S.-based. However, she made no mention of the relative dollar amounts involved or of the fact that there are over 1 million charities in the U.S.
- The revision will state that charities are not arms of government.
- Treasury will state that it does not endorse the terror watch list of any other country.
- A reference to Internet searches in vetting people and groups will be deleted, but other search items will remain.

Keller also said Treasury disagrees with the charitable sector's view that diversion of funds to supporters of terrorism only occurs when funds go directly for terrorist activities, since front groups have one foot in the legal world and one in the illegal world. She said Treasury is working on a risk matrix that is intended to help charities assess their vulnerability to abuse by terrorists, but did not know whether Treasury will seek public comment on it.

Other speakers on the panel included Kay Guinane of OMB Watch and attorney Jennifer Reynoso, of Simpson Thacher & Bartlett in New York, NY. They summarized the history of the guidelines and issues raised in public comments and by the charitable sector.

The Dec. 5, 2005 version of the Treasury guidelines, which is currently operational, was widely anticipated by charities and foundations. A working group, led by the Council on Foundations, had worked with officials from the Treasury Department to make changes to the 2002 version. The resulting version was received with disappointment by many charities. The Council on Foundation's working group called for the withdrawal of the guidelines, but an official response to the call from Treasury has not given.

NAACP Releases Information on IRS Audit

Seven Republican members of Congress filed complaints with the IRS in 2004, claiming the National Association for the Advancement of Colored People (NAACP) engaged in partisan electioneering, leading to an IRS probe, according to agency documents released to the NAACP under the Freedom of Information Act (FOIA). The NAACP has asked the Treasury Inspector General for Tax Administration (TIGTA) to review the IRS's failure to fully respond to its FOIA requests.

The Internal Revenue Service (IRS) launched an examination of the NAACP on Oct. 8, 2004, claiming a speech Chairman Julian Bond made during the organization's annual convention that criticized President George Bush's education and foreign policies crossed the line from issue advocacy to partisan electioneering. On May 17, the NAACP publicly released over 500 pages of documents the IRS has gathered since it began the audit. The documents (all 85 megabytes worth) are available at the NAACP's website.

The documents include letters sent from members of Congress on behalf of their constituents, including Sens. Lamar Alexander (R-TN) and Susan Collins (R-ME), Rep. Jo Ann Davis (R-VA), the late Senator Strom Thurmond (R-SC), and former Reps. Larry Combest (R-TX), Joe Scarborough (R-FL) and Robert Ehrlich (R-MD).

Ehrlich, the current governor of Maryland, forwarded to the IRS a letter December 2000 written by Richard Hug, chief fundraiser for Ehrlich's current re-election campaign, requesting "the IRS investigate the non-profit status of the NAACP." The letter claims that "[t]his organization has become increasingly political in recent years, particularly under its present leadership, and I would suspect much of its contributed funds are being used for political purposes."

Thomas J. Miller, the technical advisor to the IRS Exempt Organizations division, responded in a letter, assuring Ehrlich that the agency would follow up: "We have forwarded the information you provided to that office of appropriate action.".

Hug told NBC4 that the letter was prompted by a television advertisement sponsored by an NAACP affiliate, the National Voter Fund, a 501(c)(4) social action organization. In the ad, the daughter of James Byrd, a black man dragged to death by three white men in a pickup truck, faulted then-Texas Gov. George W. Bush for not instituting a hate-crime law. According to Hug, the ads were an attack on Bush from a group that is prohibited from political campaigning. While the NAACP as a charity exempt under Section 501(c)(3), is subject to the ban on partisan activity, the National Voter Fund as a 501(c)(4) organization, is not subject to this prohibition. IRS rules allow charities to be affiliated with 501(c)(4) organizations, a common practice for organizations across the political spectrum.

Once the audit was initiated, the NAACP filed three FOIA requests with the IRS in Feb. 2005, seeking information on what triggered the audit. According to a recent NAACP press release, the IRS sent a partial response in March 2005, consisting of "some heavily and inconsistently redacted documents that apparently originated from files in the IRS National Office."

A fourth FOIA request was submitted to TIGTA on June 8, 2005, for information acquired in TIGTA's investigation of the IRS enforcement program. On Sept. 9, 2005 the Inspector General for TIGTA released 241 pages. Bruce Gordon, NAACP President and CEO, called it "extremely frustrating that over a year has elapsed with no sign of the documents," adding that "it seems the IRS can rush to initiate an audit but prefers to drag its feet when responding to this taxpayer's request for information to which we are entitled."

TIGTA has not yet responded to the NAACP's request for a review of the IRS handling of the information requests. But on May 23, House Ways and Means Committee Ranking Member Charles Rangel (D-NY) added his support in a letter to IRS Congressional Affairs, urging the IRS to respond to the NAACP's FOIA requests. Rangel notes, "...[T]he IRS owes the NAACP an explanation of why, if this is the case, the requested documents cannot be disclosed. Instead of acting promptly and communicating effectively with the NAACP, the IRS has left the organization under a cloud of uncertainty."

On March 29, the NAACP announced steps it has taken to force the case into court if the IRS does not close it favorably within six months. To force a resolution, the NAACP has paid what it estimates it would owe if the IRS found it has violated the ban on partisan activity. The excise tax rate is 10 percent of the cost of a prohibited communication. In this case the NAACP estimated it spent $176.48 to disseminate Bond's speech, so it sent the IRS $17.65. NAACP General Counsel Dennis Hayes said this in no way represents an admission of wrongdoing. Instead, the NAACP has filed for a refund of the $17.65. If the organization does not receive the refund by September, it will go to court for a review of their claim.

USAID Pledge Requirement Again Found Unconstitutional

A second federal judge has ruled that a sweeping restriction on the privately funded speech of groups participating in the federal government's international HIV/AIDS program violates the First Amendment.

On May 18, a federal judge ruled that the United States Agency for International Development (USAID) violated the First Amendment by requiring public health groups to pledge their "opposition to prostitution" in order to continue receiving federal funds for their HIV prevention work. Under the requirement, recipients of federal funds were forced to adopt the policy when discussing the most effective ways to engage high-risk groups in HIV prevention even when privately raised dollars were used for the activity. This ruling follows on the heels of a similar May 9 decision by Judge Victor Marrero of the U.S. District Court for the Southern District of New York in Alliance for Open Society International v. USAID.

In the newest opinion, Judge Emmett G. Sullivan of the U.S. District Court for the District of Columbia found that the Supreme Court "has repeatedly held that the government may not compel private organizations or individuals to speak in a content-specific, view-point specific manner as a condition of participating in a government program." The court held that the pledge requirement violates the First Amendment rights of DKT International by restricting their privately-funded speech and by forcing them to adopt the government's viewpoint in order to remain eligible for funds. "By

mandating that DKT adopt an organization-wide policy against prostitution, the government exceeds its ability to limit the use of government funds," Sullivan wrote.

In his ruling, Sullivan enjoined the government from (1) requiring DKT to have a policy explicitly opposing prostitution and sex trafficking, and (2) requiring DKT to certify that it has a policy explicitly opposing prostitution. The injunction will block the government from demanding the organization take the pledge should the legal case continue. The government has 60 days to file a notice of appeal. It is currently unclear whether the government will appeal.

The ruling stems from an August 2005 lawsuit challenging a provision in the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 that required organizations to pledge their opposition to sex trafficking and prostitution or lose federal funding. DKT International sued the USAID when they were denied a $60,000 grant to market condoms in Vietnam because the organization refused to certify that it has a "policy explicitly opposing prostitution and sex trafficking." DKT provides social marketing programs in nine countries to deliver family planning products and services.

DKT argued that following the certification would have undermined its work to reach those most at risk of contracting HIV/AIDS (i.e. sex workers who are already marginalized). The group also argued the certification requirement was an unconstitutional coercion of speech by private individuals

House Passes Budget, Slips in Increase to Debt Ceiling

In the very wee hours of May 18, the House finally succeeded in passing its version of the 2007 budget resolution, more than a month too late. Majority Leader John Boehner (R-IA) had repeatedly postponed the vote, because he lacked enough support to pass the bill. The passage of the resolution carries little practical purpose, because the House and Senate are unlikely to have the time or inclination to reconcile the very different versions of the bill, and the House has already moved forward quickly with appropriations.

The $2.8 trillion budget bill, H.Con.Res. 376, barely passed the House 218-210 after a group of moderates led by Rep. Mike Castle (R-DE) decided to support the measure. The moderates had originally proved to be a thorn in the side of the GOP leadership. They ultimately caved, however, agreeing on the day of the vote to support the resolution even though the deal they were seeking -- an additional $3.1 billion for health and education programs -- came in the form of a promise to shift money within the budget cap rather than real changes in the resolution. To sway Castle and others, the House GOP leaders reassured them that this extra money would not come from cuts to Medicaid, Medicare, food stamps, or other programs for the needy, but instead from the Defense Department.

Rep. David Obey (D-WI), a Democrat who strongly opposed the budget resolution, voiced his disapproval of the moderate's about-face this way:

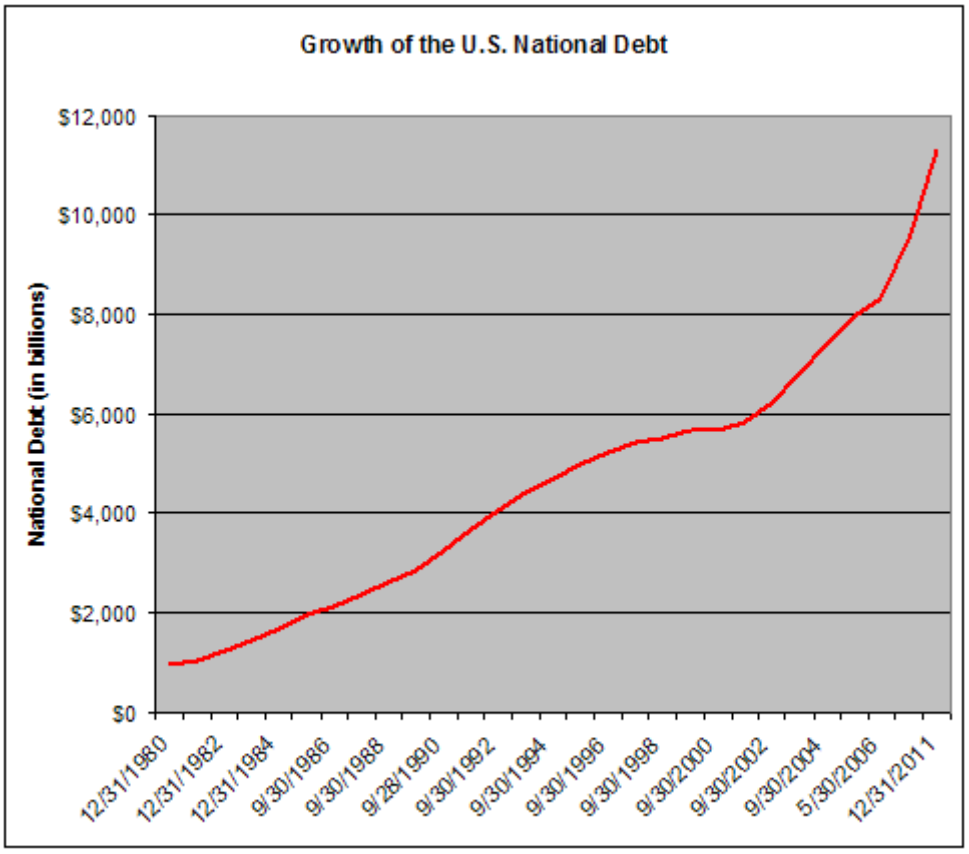
> "I was wondering whether the Republican moderates were going to stick to their

> guns when they said that they knew that it was wrong to pass a budget that provided $40 billion in tax cuts for people who make a million dollars a year while you're squeezing the guts out of education and health programs. We now know the answer.... The fact is, they are now selling out for a promise that if some time in the deep dark distant future somebody does something to change this budget resolution, then there might be a table scrap or two left for additional education and healthcare."

No Democrats crossed the aisle to support the budget resolution, although three, Patrick Kennedy (D-RI), John Larson (D-CT), and Bart Stupak (D-MI), did not vote. Twelve Republicans rejected the budget. These were Peter Fitzpatrick (R-PA), Jim Gerlach (R-PA), Virgil Goode (R-VA), John Hostettler (R-IN), Tim Johnson (R-IL), Walter Jones (R-NC), John McHugh (R-NY), C.L. Butch Otter (R-ID), Jim Ramstad (R-MN), Rick Renzi (R-AZ), John Sweeney (R-NY), and Heather Wilson (R-NM).

Debt Limit Affected in Budget Resolution

In addition to misplaced spending priorities, the authors of the budget resolution slipped in easy-to-overlook yet very important language raising the U.S. debt limit, which Congress raised by $653 billion on March 16. If this language were to pass in the final version of the resolution, it would automatically increase the debt limit to almost $10 trillion next year, and would push it still further--to $11.3 trillion--by FY 2011. With the national debt at $5.8 trillion when the president took office, his policies - and those of Congress - would result in practically a doubling of the national debt in just 10 years - a truly atrocious record unmatched in the history of the United States.



Source: Office of Management and Budget, *Budget of the U.S. Government, FY2007, Historical Tables*

These automatic increases to the debt limit in the resolution would spare Congress the embarrassing task of actually voting on an increase next year, as well as the well-deserved scrutiny that would accompany the fifth debt ceiling increase in the six years of the Bush presidency. Perhaps most shocking about the president's abysmal record on the national debt has been how much of it has been financed by foreigners. According to Senate Budget Committee Ranking Member Kent Conrad (D-ND), the country has added more debt owed to foreign investors in five years under Bush than during the 224 years of the first 42 presidents combined.

The language to increase the debt limit can be found tucked discretely into page 5 of the bill.

Immigration Plan Complicates Supplemental Spending Bill

When President Bush recently announced in his address to the nation his immediate plans for immigration reform, he didn't mention how the proposals would be paid for. A few days later, on May 18, he officially requested $1.9 billion from Congress to spend on his border security initiative. Congress will likely approve the president's request as part of the delayed Fiscal year 2006 Supplemental Appropriations bill currently in conference between the House and Senate.

Among the five objectives of Bush's immigration reform plan is securing the border with Mexico. The president has broken down the funding for his proposals into two main parts: 1) $1.172 billion to be spent by the Department of Homeland Security (DHS), and 2) $756 million to be spent on activating some 6,000 National Guardsmen to patrol the

southern border. The DHS portion is further divided among several areas including customs and border protection, and immigration and customs enforcement.

Prior to his border security funding request, Bush threatened to veto the supplement bill if it came in above $94.5 billion - a ceiling that has brought negotiations between the Senate and House to an impasse. While the House version of the supplemental aligns closely to the president's original request, the Senate version added over $14 billion in additional funding, bringing its total to $109 billion.

Rather than increasing this limit by the $1.9 billion cost of his border security measure, Bush is sticking to the veto threat and the original $94.5 billion cap. In order to meet this goal, the Office of Management and Budget and the Pentagon have prescribed specific military line items to cut from the supplemental. These cuts to military spending would include reconstruction projects for Afghanistan and Iraq and various weapons projects and other military hardware spending. Funding for these proposals will almost certainly be added back into the next supplemental bill or to the forthcoming regular Defense appropriations bill - thereby making the president's threats to hold the line on spending rather pointless.

While the president's border initiative is debatable in its own rite, the method he's chosen to fund it is troubling but not atypical of an administration known for power grabbing. By its inclusion in the emergency spending bill currently being debated in Congress, the proposal and the funds requested for it are removed from the regular congressional oversight processes. The funds are also removed from budget enforcement mechanisms, and ultimately dissent is stifled, because in order to do so lawmakers would be forced to cast a politically difficult vote against military funding during a war.

In addition, while the $1.9 billion price tag is small compared to the overall cost of the supplemental bill, the president's request has complicated and further delayed negotiations taking place between the Senate and the House over their respective versions. Indeed, one Senate aide partially attributed the current delays to Bush's request saying "[the border security request] pushed us beyond the brink."

The House and Senate will resume negotiations on the spending package when Congress returns to work after the week-long Memorial Day recess.

House Speeds Through the First of its Spending Bills

Immediately following the passage of a House budget resolution last week, the Appropriations Committee (and its relevant subcommittees) got down to business and passed its first four appropriations bills. Although the House is once again off to a blistering pace, the lack of a final budget resolution a jam-packed Senate calendar and a short legislative session, will almost definitely delay appropriations beyond the start of the fiscal year. This situation will surely necessitate continuing resolutions and a lame-duck session after the November elections.

With four of the 11 appropriations bills already passed - Agriculture (378-46), Energy-Water (404-20), Interior-Environment (293-128), and Military Quality of Life-VA (395-

0) - the House is on schedule to finish its appropriations bills before Appropriations Chairman Jerry Lewis' (R-CA) self-imposed deadline of July 4.

While the initial bills have moved quickly, debate over contentious spending bills will likely slow the process. For example, the Homeland Security appropriations bill has been reported out of committee and is awaiting a floor vote, but there will no doubt be lengthy debates over amendments and spending levels for each program. Indeed, a bevy of amendments have already been either rejected (such as increased funding for department management and equipment, and training for first responders) or approved (firefighter grant programs and increased funding for the Transportation Security Administration) by the House. The much-maligned FEMA received $2.6 billion less than had been requested by the president.

If the current congressional schedule holds, the House will bring the Foreign Operations appropriations bill to the floor on June 8 after completing the Homeland Security appropriations bill. The $21 billion Foreign Operations appropriations bill is 10 percent lower than the president's proposal, but fully funds a few of his requests, including $3.4 billion for AIDS relief and $2.5 billion for aid to Israel. It withholds $150 million in economic aid to the Palestinian Authority, but includes $80 million in humanitarian aid.

Because the House and Senate have yet to agree on a budget resolution, GOP leaders are looking at alternative ways of capping discretionary spending. One approach they are considering is a "deeming" resolution that would be attached to the hotly-debated emergency supplemental currently making its way through conference - only one of multiple additions to the bill complicating its passage. The lower deemed cap of $873 billion for spending for Fiscal year 2007 is the same figure called for by the House's budget resolution but is $16 billion less than the Senate's budget resolution. This controversial spending level will complicate and further slow the congressional appropriations process markedly this year, particularly for the large bills such as the one covering the Departments of Health and Human Services, Education, and Labor.

Who Wins With The Tax Bill? Bush Raises Taxes On Students, Expatriates

President Bush marked the culmination of a more than 15-month effort to enact new tax cuts for the wealthiest Americans last week when he signed the $70 billion 2005 tax reconciliation bill into law. In order to keep the bill within cost limits despite the give-away to the affluent, the president and Congress enacted tax increases on students saving for college and Americans working abroad.

The $70 billion tax reconciliation bill triples taxes for teenagers with college savings funds, a provision expected to raise $2.2 billion over ten years. Under the new law, teenagers age 14 to 17 with investment income will no longer receive lower tax rates on capital gains and dividends.

Additionally, Congress added a last-minute provision to increase taxes on Americans working overseas. The change is expected to raise $2.1 billion over ten years, and raises taxes on Americans living abroad by about 6 percent overall. According to *The New*

York Times, the law changes how taxes "are calculated on subsidies like housing allowances, which should push many of those Americans into higher tax brackets."

These last-minute tax increases only underscore the misplaced priorities Congress and the president have pursued since the beginning of 2005. Stopping at nothing to give more tax cuts to who the Economic Policy Institute has called "the wealthiest of America's wealthy," GOP leaders in Washington have made other Americans pay more in taxes and left us all more vulnerable by continuing to add to the skyrocketing federal deficit.

Return of the Senior Death Discount?: Heinzerling Takes On Mannix

Is the senior death discount back? It may be, if a recent speech by an Environmental Protection Agency official is any indication.

In a keynote address for an EPA workshop on economic analysis last month, Brian Mannix (associate administrator of the agency's Office of Policy, Economics, and Innovation) called for the return of a controversial way to measure the number of human lives saved by environmental regulations.

Mannix called for EPA to abandon the practice of assessing the benefits of a proposed regulation by plugging in the number of lives saved, and to replace it with a method of counting the Value of Statistical Life Years (VSLY) saved. Because VSLY focuses on life *years* saved rather than *lives* saved, benefits from saving the lives of the elderly count for less than benefits from saving the lives of the young, because the elderly have fewer life years remaining.

Accordingly, the practice is better known as the senior death discount.

EPA proposed but then withdrew the practice of using VSLY over VSL three years ago, but the threat reemerged in Mannix's speech.

Point - Counterpoint

The following is the text of Mannix's speech, with a point-by-point rebuttal from Georgetown law professor Lisa Heinzerling:

Point - Mannix	Counterpoint - Heinzerling
What I want to do today is step back and take a look at the metrics we use to describe the benefits of mortality reductions that we attribute to environmental regulations. In particular, I want to	First off, note the use of euphemistic jargon. "Benefits of mortality reductions" are, in plain English, human lives saved -- or, even more pointedly, they are the people who will be killed by pollution unless EPA acts. When you hear "benefits of mortality reductions," think: he's talking about people who are being killed by pollution. As you read the rest of the speech, try to spot the euphemistic jargon, and

raise questions about the statistical robustness of the "lives saved" metric that is now commonplace.

try to figure out what it means.

Second, see how the relevant issues are narrowed from the start: the issue is the "statistical robustness" of the "'lives saved' metric" (more euphemistic jargon), not the moral appropriateness of cost-benefit analysis.

I should say that, years ago, I was an advocate for VSL (Value of a Statistical Life) analysis, and encouraged EPA to focus its efforts on measuring lives saved. Now that I am back at EPA, I am surprised at how much progress has been made in incorporating VSL into agency analyses and decisions. I am surprised, too, to find that I am not very comfortable with where that progress has left us. And I am most surprised to find that the most serious difficulty, in my mind, turns out not to be with the V, but with the SL. That is, the economic valuation of mortality benefits is a tractable problem analytically and politically. But figuring out the right underlying metric for mortality benefits is much more problematical.

For years, economists have hounded EPA to come up with a monetary valuation for human life. Now that EPA has done this, they don't like it anymore. Why might this be? Note that one of the biggest decisions facing EPA today is setting a new air quality standard for fine particulate matter. Note, too, that regulation of fine particulate matter is one regulation that overwhelmingly, in analysis after analysis, has passed a cost-benefit test. In fact, in OMB's annual reviews of the costs and benefits of federal regulation, regulation of fine particulate matter puts environmental regulation "in the black" in terms of net benefits; it produces so many benefits that a lot of programs can produce more costs than benefits and still be "paid for," if you will, by the regulations for fine particulate matter. Finally, note that many of the people saved by stricter regulation of fine particulate matter are elderly.

Now you can understand why it is no longer enough to translate human life into dollars. That analysis justifies air pollution regulation that is much too stringent for the current agency's tastes. So the "V" -- the value of life -- is all right, but the focus on life -- "SL" -- must go.

Mannix also claims that setting a dollar value for life is "politically tractable." Is that so? Is the public really aware that EPA has translated human life into dollar terms, that the going value for life is between 5 and 6 million dollars, and that it's gone down in the last few years? If the issue is so "politically tractable," why is the actual value EPA uses for human life always buried deep in dense tables, in government documents almost no one reads? Why doesn't the government put out a press release: "the value of life this year: 5.5 million dollars; stay tuned for next year's (new, improved, lower) value"?

I'll illustrate this with an extreme example. Suppose, on Monday, a hospital in a small town publishes a press release, announcing that, over the busy weekend, it had managed to save a dozen lives. The local TV station sends a camera crew, and asks if it can interview a few of the lucky survivors. The ER nurse tells them: "I'm sorry, that won't be possible. He died." "What do you mean, who died?" the reporter asks. "The man who was having the heart attacks," the nurse replies. "We managed to save him 12 times ... in 13 attempts."

No one really talks this way about saving lives. Mannix has created an analytical problem only by acting like a visitor from another planet who doesn't understand how humans talk about life and death.

The point of the story is that, while we can easily count lives or deaths, we cannot easily count "lives saved." It is not well defined, and it is inherently unbounded. The airbag may save your life in the event that your brakes fail. But how many times did the brakes save your life when they didn't fail? The number of times my life was saved during my commute this morning is already beyond my ability to reckon.

It is hard to figure out what Mannix is trying to do here. Yes, our lives are protected in dozens or hundreds of ways every day. Does this mean we can't say something special has happened if a police officer rescues us from a kidnapper? Or a doctor gives us life-saving medicine? Here, too, it is as if Mannix has just dropped in from outer space.

In some narrow contexts we might be able to come up with a workable definition of a life saved. As a lifeguard Ronald Reagan would put a notch in a log every time he saved a life, and I don't doubt that it was accurate and meaningful. If he had kept a notched log during his Presidency, however, I can't imagine how we would come up with an accurate count, or interpret it if we had one. I don't believe it is possible to come up with a definition of lives saved that is robust, that can be applied to a wide variety of situations, and that can be aggregated in a statistically meaningful way.

Here is why Reagan was President, and Mannix is a policy analyst within a large government bureaucracy: Reagan understood that something special had happened when he saved someone from drowning.

It is not clear why Mannix is so skeptical about our ability to count how many lives are saved through government action. If we really can't do this, then cost-benefit analysis -- the decision-making framework addressed, and advocated, throughout this speech -- cannot be done for life-saving regulation, since cost-benefit analysis depends in the first instance on counting up the benefits regulation will produce. If we can't do this, we can't do cost-benefit analysis.

The underlying difficulty is that "lives saved" lacks a time dimension. We know that all lives are temporary, and, while the valuation problem can be quite complex, we are generally in agreement that longer life is better than a shorter one. If we don't capture this time dimension, we are unlikely to come up with a metric for mortality that is versatile and behaves well in statistical usage.

But wait! It turns out Mannix doesn't really believe we can't count how many lives are saved by regulation. It turns out he just doesn't think saving lives is what matters. Lives are "temporary," he reminds us; as other fans of cost-benefit analysis have often said, lives are never saved, but only prolonged. (Here the rhetoric turns dark rather than euphemistic; it doesn't sound so nice to "prolong" a life.) We have to figure out a way to account for this fact in our analysis; otherwise it won't be "well behaved." (One can only guess at the standards for "good behavior" on the part of "metrics for mortality.")

Notice the giant non sequitur. Mannix has gone from claiming that we can't come close to figuring out how many people are saved by regulation (an empirical claim) to saying that what really matters is how long we live (a normative claim). There is no connection between Mannix's confusion about how many times his car brakes have saved his life and his "solution" of taking into account the "temporary" feature of life by changing the "metric for mortality." One is an empirical conundrum; the other is a

moral judgment of the highest order.

Note, too, that if we really can't figure out how many lives are saved by environmental protection, we can't figure out how many life-years are saved, either.

Now, there is a standard statistic for measuring longevity that everyone is familiar with: the expected value of the length of life, or life expectancy. It has several advantages in communicating with the public. Everyone has a pretty good idea of what it measures. People also have a good sense of what the units mean. They may have a great deal of difficulty picturing what a 10 -6 risk of death is, but they know how long a minute is and how long ten years is. That covers more than six orders of magnitude. This also solves the problem of divisibility: some find it difficult to think about a fraction of a "life saved" or about the same life being saved multiple times, but they have no trouble dividing time into units of arbitrary size. The public is also likely to have less difficulty in attaching a monetary value to changes in life expectancy-- even those who cannot imagine attaching a finite value to a life saved.

There is a lot here, none of it sensible. But let us begin.

Mannix is right that everyone understands the concept of life expectancy. But everyone also understands the concepts of life and death. One might even be so bold as to suggest that life and death are more "tractable," "analytically," for the average person, than life expectancy is.

Mannix doesn't want to talk about life and death, though; he wants to talk about a 10-6 (one in a million) risk of death. This is what cost-benefit folks always do: they insist that we talk about risk of death, not death itself. This is because their analysis doesn't work if we talk about death. Cost-benefit analysis today asks how much money people are willing to pay for regulatory benefits, or alternatively, how much money they will accept to give up those benefits. If we tried to figure out these values for life and death, we'd end up either just measuring how much people were able to pay (because presumably most people would give up everything they have to avoid certain death), or we'd end up with no number at all (because most people won't accept certain death in exchange for money). But when pollution kills, it kills real people. Pretending that we're just talking about risk, not death, doesn't change this simple fact.

Even on its own terms, Mannix's analysis is nonsensical. He thinks people can understand life expectancy, but not risk. How, then, does he propose conducting cost-benefit analysis of changes in life expectancy? Are we to presume that the changes in life expectancy are certain to occur (since people won't be able to understand risk rather than certainty)? If so, how can he be so sure economic analysis here won't be doomed by the same dilemma noted above -- that is, if people are given a choice between living five more years and taking a big wad of cash, what if just won't sell?

And how much comfort are we to derive from the fact that people can divide time into units of "arbitrary size"?

The real advantage of life expectancy, however, is that it is a well defined and well behaved summary statistic that reflects the mortality risks across an entire population, including risks of all kind and at all ages, without discriminating against any particular subgroup.

Mannix's notion of non-discrimination is disingenuous. Although tersely stated here, the idea is, I think, that valuing people according to their life expectancy (with the elderly faring worse than the young) is a way of avoiding discrimination because it's a way of treating everyone's "life-years" the same. If I have 40 years left to live, and you have 4, then the only way to treat us equally is to value me more; that gives equal respect to each of the life-years each of us has left. No one I know of thinks this way other than the political appointees who have dreamed this up as a way of rescuing their beloved methodology. Officials at OMB started to talk this way, too, when the original "senior death discount" came under fire.

Let's suppose we are evaluating a range of policy options, all of which

Here are the things we have to go along with in order to accept Mannix's hypothetical scenario:

have small marginal effects on mortality risks. If we take as our mandate to maximize life expectancy, using limited resources, we can easily solve the problem, at least on paper. We know that the solution will give us a cost-effectiveness criterion--a fixed dollar amount per incremental year of life expectancy. And the decision rule would be to adopt those measures that met the cost-effectiveness criterion, and to avoid committing resources to those that didn't.

1. The mortality risks EPA addresses are "small." This surely isn't true for the big policy issue now on EPA's plate: the revision of the fine particulate matter NAAQS.
2. Our mandate is to maximize life expectancy. Only if Mannix's view of the world holds; that is, only if we think we shouldn't protect the elderly as much as we protect the young.

   Note, too, that even if we're interested in saving lives, period, no matter how old the people who will be saved are, it may be that maximizing this value alone won't be very satisfactory. EPA is also in the business of protecting ecosystems, nonhuman species, watersheds, etc. A rigid "maximize life expectancy" mandate ignores every one of these other values.

3. We have limited resources. How could anyone argue with this idea? The counterpoint is not that we have unlimited resources, but that the people who talk about "limited resources" make two huge errors.

   First, they act as though money that we refrain from spending on one program will be diverted to another program. If we set a more relaxed standard for particulate matter, for example, we'll spend the money we saved on health care programs for children. This never happens. There is not even a legal mechanism by which it could happen. The money not spent on cleaning the air stays in the pockets of the industries that pollute; the children don't get the money.

   Second, the people who talk about "limited resources" act as though there is some natural limit on the amount we can or will spend on environmental protection. There is not. The amount we are willing to spend depends on, among other things, our awareness of environmental problems and our sense that something must be done about them. Perhaps if we talked about "the pollution that kills people" rather than "benefits of mortality reductions," we would be willing to spend more for environmental protection.

Note that if we use another decision criterion in place of this one, we will get a shorter life expectancy for the same expenditure of resources. If we use a VSL rule, for example, we might "save more lives," whatever that might mean; but, on average, people will live shorter lives. In most cases I think the two criteria would lead to very similar outcomes. When they don't,

These claims are completely dependent on the "limited resources" idea.

however, we have to ask ourselves whether selecting a portfolio of policies that results in shorter life expectancy can really be said to be improving public health.

Similarly, if we adopt maximum life expectancy as the goal, but make adjustments to our metric for age, quality, or willingness to pay, the result will be that people live shorter lives. Better, perhaps, in some sense. But shorter.

We need a translation here. What Mannix is recognizing, without saying so, is that some studies have concluded that the elderly are willing to pay more to avoid risk than younger people are. If we adjust our "metric" to account for "willingness to pay" in this context, then we'll end up back where we started: we'll protect the old as much as the young. Can't have that, surely. And just in case you thought that didn't sound so bad, please know that your life will be shorter as a result -- because, as you'll recall, the amount spent on protecting the elderly is coming right out of your pocket of limited resources.

I believe this creates a strong presumption for using life expectancy as a standard metric in evaluating regulatory decisions, using a flat VSLY as the cost-effectiveness criterion. As a first-order approximation of mortality benefits, I think this is vastly superior to the VSL approach. And I think that anyone advancing some other decision rule needs to explain how we can justify adopting policies that will lead to a shorter life expectancy. I don't rule out that such justifications may exist, but I think we should be cautious in entertaining them.

Once again, Mannix's fearmongering -- we'll all live shorter lives if we protect the elderly as much as the young -- is completely dependent on his strong assumption of limited resources. If it turns out that we, the richest country in the world and in the history of the world, can afford both to clean up the air and to vaccinate our children, then we needn't give in to Mannix's hectoring.

Al McGartland has pointed out to me that there is a contradiction here. I embrace the use of willingness-to-pay data in figuring out what our cost-effectiveness criterion should be. But I shrink from looking any deeper into the data to find out how it might vary from group to group or person to person. I think this is a contradiction that I can live with. Certainly an individual-- perhaps because he is wealthy--who is willing to pay, and does pay, much more than average to reduce his

For those of you not familiar with EPA's organizational chart, Al McGartland is the Director of EPA's National Center for Environmental Economics.

Up until this point in the speech, I had assumed that Mannix's "cost-effectiveness criterion" was derived by simply figuring out how much money EPA had to spend and then identifying the regulatory approaches that would save the most life-years, given that amount of money. But now we learn that Mannix has somehow worked willingness-to-pay into his cost-effectiveness criterion. It's mysterious just how he has done this, or why. Cost-effectiveness analysis is often conceived of as a way of avoiding the moral and political complexities of cost-benefit analysis, since it doesn't require that we identify a dollar value for human life and other benefits of regulation. So it's not clear why Mannix has smuggled some form of cost-benefit analysis (through a focus on willingness-to-pay) into his cost-effectiveness analysis.

own mortality risks, should be able to do so. But I am not ready to concede that that same individual is entitled to tilt public health measures in his favor simply because he would be willing to pay--but does not pay for them. When writing general rules, or spending public funds, there is an egalitarian consideration that does not apply when individuals are spending their own money. Certainly it does not seem fair for me to spend other people's money on my own health care more lavishly than they are willing to spend it on themselves.

In any event, what Mannix is saying here is that he's unwilling to take willingness-to-pay to its logical conclusion, which is that the lives of the rich are worth more than the lives of the poor -- because, after all, they're willing to pay more to avoid risk.

Many people would also resist this conclusion; that is, they would think it appropriate for EPA to treat the rich and the poor alike in developing rules. They would likely explain their conclusion by reference to principles of fairness and equality. They would also probably assume that their conclusion implied that we should spend as much to protect the poor as to protect the rich.

Not Mannix. Mannix says that the reason we shouldn't take willingness-to-pay to its logical conclusion is that we'll end up spending too much to protect the poor. This would be bad... why? Because it would be paternalistic, even presumptuous; who are we to tell the poor that they should have the same quality of air that we, the rich, can afford? Especially when they're spending "other people's money."

But remember: the "other people" who would, through regulation, be required to spend "their money" to, say, clean up the air, are the people who are killing the people whose lives are under discussion.

When did telling someone to stop killing someone else become a matter of "spending the [killer's] money"? This is the kind of moral emptiness we get when we start off by talking about not killing people as "benefits of mortality reduction."

As analysts we may feel we can improve the analysis by making adjustments for age or quality, or to incorporate the latest willingness-to-pay data. But as a government official, I am reluctant to go very far down that road. In part, that is because I question whether government has any legitimate business making such adjustments, and in part it is because, if the government did get into that business, the adjustments would likely be made according to the rules of politics, not necessarily those of economic analysis. So my final argument is this: perhaps a flat VSLY is desirable for the same reason people argue that a flat tax would be desirable; it minimizes the opportunities for special pleadings and preferential treatment.

Mannix's peroration requires some untangling. Although Mannix questions "adjustments" to economic analysis based on age, he himself has spent most of his speech defending such an adjustment: the use of life-years saved as the sole criterion for judging regulation. In addition, although Mannix clearly disdains making such judgments based on "the rules of politics," the criterion of life-years saved is hardly apolitical. It is certainly not a "scientific" choice.

One can only hope Mannix's favored methodology will suffer the same fate as the flat tax he compares it to.

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Nonprofit Issues

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Nonprofits Registering Voters Face New Restrictions

A growing number of nonprofit organizations in states across the country are finding new rules make it difficult or impossible to continue their nonpartisan voter registration efforts. In Florida, the League of Women Voters and a host of other groups have sued the state to stop enforcement of rules that make such voter registration drives substantially more difficult and risky.

The League of Women Voters of Florida has worked to encourage eligible voters to register to vote since 1939. After a new law took effect in January, however, the group suspended all of its voter registration programs, blaming what it calls the Florida law's "punishing

and complicated regime of deadlines and fines."

In May, the League and other plaintiffs filed *League of Women Voters et. al. v. Cobb et. al.* in the U.S. District Court in Miami to stop enforcement of the new law. The plaintiffs include community, religious, labor and educational groups. They describe their concerns in a May 18 release: "For each and every voter registration form submitted more than ten days after the form was collected from a prospective voter, the government will impose a fine of $250, while for each registration form submitted after the passing of a registration deadline, the fine is $500. If a registration form is not submitted, for any reason, the fine per form jumps to $5,000.

Most chilling to plaintiffs' activities is the law's adoption of a 'strict liability' legal standard, meaning that no extenuating circumstance -- not even destruction of an office by a hurricane -- will excuse the failure to submit a registration form. Plaintiffs say the impact of multiple fines would devastate the budgets of many non-partisan voter registration groups."

The complaint in the suit explains that the new laws and fines only apply to nonpartisan groups, exempting political parties, including the Surfers Party. However, plaintiffs say there is no evidence of more lost or late voter registration forms from non-party groups than from political parties. They also point out that this uneven treatment is unconstitutional and could "devastate the budgets of many nonpartisan voter registration groups."

Overall, the impact will be that, "These fines will quickly erase from the state some of the most basic rights of American democracy: the non-partisan voter registration table at the mall or bus stop; the unaffiliated registration advocate at a school or workplace; and the encouragement to participate in elections often found in churches and synagogues," according to Elizabeth Westfall of the Advancement Project.

The Florida suit may be only the first in a number of similar challenges to laws negatively impacting **nonpartisan** voter registration initiatives throughout the country. A fact sheet from the Brennan Center notes that similar laws have been recently enacted in Colorado, Ohio, Maryland and New Mexico; with Arizona, Georgia, Missouri, and other states considering similar bills. In all cases, the laws seem to make voter registration efforts substantially more difficult, or perhaps impossible, for organizations who have "dramatically increased voter registration rates among groups that have traditionally faced the greatest barriers to voting."

Lobby Reform Update

Although GOP leaders are promising a final lobby reform package by the July 4 recess, a group of Republican Senators has broken rank and is threatening to filibuster the lobby reform conference report if it includes a provision expanding regulation of independent 527 organizations.

On June 9, a group of seven senators sent a letter to Senate Majority Leader Bill Frist (R-TN) opposing the inclusion of a provision on independent political committees (527s) in the lobby reform bill expected to go to conference in early July. The 527 provision, included in the House version but not in the Senate bill, would subject 527s that work on federal elections to essentially the same contribution limits and reporting requirements as federal candidate campaigns and political parties. Originating out of Sen. George Allen's (R-VA) office, the letter has also been signed by Sens. Sam Brownback (R-KS), Tom Coburn (R-OK), Jim DeMint (R-SC), Mike Enzi (R-WY), John Sununu (R-NH) and David Vitter (R-LA).

The letter defends 527 organizations, calling them "nonprofit advocacy groups" that "pose no threat of corruption as they are required to disclose all donors, barred from urging voters to support or oppose a candidate, and prohibited from coordinating with political parties or elected officials."

Additionally, the letter argues, "Republicans do not need, and should not attempt, to muzzle their opponents. The increase in free speech over the last two decades made possible by the growth of talk radio, cable TV and the Internet has benefited our Party, which allowed us to promote individual freedom and opportunity that has led to unprecedented prosperity for our nation."

While most of the opposition to the 527 provision has come from Democrats, some Republicans and conservative groups have begun to oppose it. In April, members of the House Republican Study Committee, led by Rep. Mike Pence (R-IN), opposed H.R. 513, a stand alone 527 reform bill that has now been married with the lobby reform legislation that passed the House. David Keating, executive director of the Club for Growth, conservative 527, has also come out against expanding 527 regulation, saying last week it would award extra points on its scorecard - annual ratings of lawmakers - to members of Congress that oppose regulating independent 527 groups.

What this means for the lobby reform conference is unclear. Although Frist and House Speaker Dennis Hastert (R-IL) stated on June 9 that they have asked lobby reform conferees to have a final package ready by the July recess, the House still has yet to name conferees to meet with the Senate, which named its conferees last month. Hastert has said

that he will name conferees before the July recess. There is speculation that he is avoiding naming conferees until staff behind the scenes come to agreement (called pre-conferencing) on specific provisions of the bill.

FEC Won't Change 527 Rules This Year

The Federal Election Commission (FEC) on May 31 announced it will provide a better explanation and clear justification of its 2004 rule limiting regulation of 527 independent political committees. The move can in response to a court order that calling on the FEC to either explain the rule or open up a new rulemaking providing more limits. The timing for the FEC action is not clear.

Some campaign finance reform groups have advocated applying federal contribution limits to all independent 527s. The FEC's August 2004 rule requires 527s to follow federal limits when raising funds for support or opposition to specific federal candidates. Contributions from such individuals are subject to a $5,000 limit and must be reported to the FEC. The 527 group must also pay for voter mobilization activities and administrative expenses, including salaries and overhead, with 50 percent hard money funds. There is no limit on other funds raised by the 527s, and such contributions are disclosed to the IRS, not the FEC. The rule was approved in August 2004 after a controversial rulemaking that generated over 100,000 comments from the public.

The 2004 rule was challenged in a suit filed by sponsors of the Bipartisan Campaign Reform Act of 2002 (BCRA) and the Bush-Cheney campaign, who claim BCRA requires the FEC to adopt broader regulations. The court order instructed the FEC to provide a better explanation of the 2004 rule or initiate a new rulemaking. The FEC announced that it will not appeal the court decision, and it will keep the current rule in force during this election year.

The FEC is, thus, required to provide greater justification for its 2004 rule. No timetable has been given for when the FEC will publish the new explanation and justification for its rule. Advocates of stricter regulation, such as Democracy 21's Fred Wertheimer, have already said they are unlikely to accept the clarifications, and the issue will likely end up back in court. These same groups are advocating legislative solutions to "rein in" 527 groups. Their latest target is lobby reform legislation. (Link to Jennifer's story about lobby reform bills.)

In related news, on June 5 a federal court ruled that the FEC can proceed with its enforcement case against the Club for Growth for violating the current 527 rule, which took effect on Jan. 1, 2005. It alleges that the group solicited contributions for specific

federal candidates, raising more than $4 million in 2004 from donors that exceeded the $5,000 contribution limit.

Federal Court Rules Against Taxpayer-Funded Religious Programs for Inmates

A federal judge has ruled that an evangelical Christian program operating in an Iowa state prison promotes religion with state funds, in violation of the Establishment Clause of the Constitution. The court ordered the program to reimburse the government $1.5 million.

On June 2, Judge Robert W. Pratt of the U.S. District Court for the Southern District of Iowa found a prison pre-release program operated by Prison Fellowship Ministries (PFM) "literally established an Evangelical Christian congregation within the walls of one of its penal institutions." He also found "no adequate safeguards present, nor could there be, to ensure that state funds were not being directly spent to indoctrinate Iowa inmates."

In his ruling in Americans United for Separation of Church and State v. Prison Fellowship Ministries , Judge Pratt enjoined PFM from operating the InnerChange program within the Iowa Correctional Facility as long as it is supported by government funding. Pratt denied the defendants' request to alter the program, reasoning that it "would encourage the Court to engage in micro-management of a state correctional agency--something that is discouraged except in the most necessary of circumstances." In addition, Pratt ordered PFM to reimburse the state the "full amount of state funds paid to the program since the inception of its contractual relationship with the Dept. of Corrections in 1999," amounting to over $1.5 million.

Faith-based organizations are barred from using direct government financial assistance to support any "inherently religious" activity, including worship, religious instruction, and proselytization. An organization that engages in inherently religious activities must offer those services to beneficiaries separately in time and location from programs and services supported by non-private funds.

In his opinion, Pratt concluded that:

1. the prisoners in the program were subjected to an intense, Christian-based program in which there were no secular alternatives or alternatives for other faiths,
2. the non-religious content could not be separated from the faith-based content,
3. the prisoners who participated in the program received tangible benefits other prisoners did not receive, and
4. the state knowingly chose a religious organization to carry out a state function,

thus burdening the program staff with the same responsibilities of any state employee, including the prohibition against using state resources to teach others their form of religion.

These factors led Pratt to find that the state had committed "severe violations" of the Establishment Clause. Pratt remarked, "The level of religious indoctrination supported by state funds and other state support in this case in comparison to other programs treated in case law...is extraordinary."

PFM president Mark Earley said the organization will file an appeal with the Eighth Circuit Court of Appeals this week. In a statement Early alleged, "This decision, if allowed to stand, will enshrine religious discrimination. It has attacked the right of people of faith to operate on a level playing field in the public arena and to provide services to those who volunteered to receive them."

American United's Executive Director Barry Lynn countered in a statement, "Tax funds cannot underwrite conversion efforts. The bottom line is government has no business paying for religious indoctrination and conversion programs in prisons and any other tax-funded institutions".

Pratt ordered the injunction and repayment suspended pending the appeal, meaning the penalties will not take effect during the appeal process.

Sunset Commissions Update: Take Action

Reports coming from GOP leadership about the timing of sunset commission legislation are conflicting, with one report suggesting that a bill could be considered in the House as early as next week, but agree all the same that some vehicle will move this summer.

In the past few days, rumors have circulated that House Majority Leader John Boehner (R-OH) was leading efforts to combine differing sunset commission bills, with the Todd Tiahrt (R-KS) bill (H.R. 2470) the centerpiece bill to be supplemented by language from the other leading bills.

Reports emerging from Boehner's office present differing pictures about the possible timeline for House consideration of sunset commission legislation. Some Hill sources suggest that it is unlikely the negotiations have produced a final vehicle ready for release next week. Meanwhile, *CongressDaily* reports that floor consideration of a sunset commission proposal could take place as soon as next week, immediately after the House

votes on the line-item veto.

OMB Watch, Public Citizen, and a number of other groups have organized a broad coalition to oppose sunset commission legislation. Because GOP leaders have not indicated which bill will be moved forward, but clearly intend to strong-arm a bill through, OMB Watch has created a sunset commission resource center and encourage community groups visit it frequently. Individuals can also take action and call on their representatives to oppose these dangerous proposals.

Legislative Update: Plain Language and GAO Reg Review

The House Government Reform Committee reported out two bills relevant to regulatory policy: one to facilitate compliance by encouraging agencies to draft regulations in plain language, and another to bring the Government Accountability Office into the process of regulatory reviews.

The bills moved after a June 8 markup session.

Regulation in Plain Language Act of 2006

The committee reported without amendment H.R. 4809, the Regulation in Plain Language Act of 2006, which requires that federal agency rules be written in plain language. A bipartisan bill backed by both Reps. Candice Miller (R-MI) and Stephen Lynch (D-MA), the Regulation in Plain Language Act was designed to make regulation compliance and enforcement more effective and to encourage clarity in rulemaking. The use of plain language is expected to reduce the business practice of using statutory ambiguity in order to avoid regulation and save multiple parties money in their attempts to interpret federal regulations.

The bill would amend the Paperwork Reduction Act (title 44, chapter 35 of the U.S. Code) to create general standards for plain language and create a new staff position in the agencies to encourage regulatory drafting in plain language. The new standards define plain language as clear, straightforward language, understandable to the intended reader. The bill encourages the use of short phrases, grammatical clarity, and visual aides.

Backers of the bill depart from the usual anti-regulatory trend by seeking to make compliance less costly without reducing the protections that the public enjoys. Proponents argue that when federal regulations are clear enactment is sure to increase, along with higher expectations that allow for stricter enforcement. The shift encourages fairness, allowing a greater proportion of the population to understand regulations, without the

need for expert interpretation. The goal is to create concise yet intelligent regulations that are easy enough for everyone to follow and clear enough to reduce manipulation or avoidance.

Truth in Regulating Act Amendment

The committee also reported out a bill to amend the Truth in Regulating Act. The Truth in Regulating Act of 2000 authorized a pilot project in which the Government Accountability Office would, upon request, review agencies' regulatory impact analyses for economically significant rules. The project was never funded, and GAO never conducted any reviews.

H.R. 1167 would amend the Truth in Regulating Act to make the pilot project permanent. The amendment would simply strike the "pilot project" heading and institute the authority permanently.

In committee mark-up the bill was altered by Rep. Henry Waxman (D-CA), to limit the authorization to only 3 years, dependent on funding of no less than $5 million per fiscal year. The bill was reported out with this amendment, and the title will now read, "A bill to amend the Truth in Regulating Act to authorize an additional period of 3 years for the pilot project for the report on rules."

States Losing Ability to Protect Public Due to Federal Preemptions

Despite the party's repeated use in recent years of states' rights rhetoric, the GOP-dominated Congress and Bush White House have been assiduously working to eliminate the ability of state governments to protect the public.

Preemption Through Congressional Act

A new compilation of congressional activity reveals that Congress has voted 57 times to preempt state law and regulations in the last five years, including preventing states from instituting health, safety, and environmental standards.

According to a report released June 6 by House Government Reform Committee ranking member Henry Waxman (D-CA), those votes have resulted in 27 laws overriding state laws and regulations, including 39 preemption provisions.

Many of those preemptions gut state standards for consumer protection, such as safeguards against food contamination, as well as environmental, health, and safety standards. The enacted preemptions also take power away from state courts and limit

state choices in deciding social policies.

In perhaps the most famous example of preemption in the past year, both Congress and the Bush administration stepped into the dispute over the end of life decision for the family of Terry Schiavo. Despite the state court repeatedly upholding Mr. Schiavo's decision to remove the feeding tube for his wife who had been in a persistent vegetative state since 1990, Congress passed Pub. L. 109-3, bringing the family dispute to federal court "notwithstanding any prior state court determination and regardless of whether such a claim has previously been raised, considered, or decided in State court proceedings."

The state judge refused to uphold the congressional act, saying that "Theresa Schiavo's life and liberty interests were adequately protected by the extensive process provided in the state courts." This decision was upheld by the federal circuit court. While Congress was unsuccessful in this instance, other preemptions of state and local authority have been implemented.

Preemptions passed by Congress include the following:

- *Preemption of drug liability laws* Cases against drug manufacturers for injuries are generally brought to court at the state level. The 2006 Department of Defense Appropriations Act (Pub. L. No. 109-148), however, severely limits the ability of claimants to sue for injuries caused by drugs or vaccines considered to be "countermeasures" against a flu or epidemic, as decided by the Secretary of Health and Human Services.
- *Preemption of Firearms Trace System* The 2006 Science, State, Justice, Commerce, and Related Agencies Appropriations Act (Pub. L. No. 109-108) limits state use of the Firearms Trace system, a database used by law enforcement officers to identify guns routinely used in violent crime or disproportionately associated with accidents. The provision bars state and local law enforcement agencies from using the database to track gun use for anything other than a criminal investigation.
- *Preemption of laws limiting SPAM* The 2003 CAN SPAM Act overrides laws in 38 states that protect against unsolicited email messages. The federal law is much weaker than many of the state standards that require consumers to affirmatively "opt-in" before receiving commercial messages.
- *Preemption of vicarious liability laws* The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. No. 109-59) overrides state laws that hold the owner of a vehicle liable for an accident when the car is driven by a renter or a lessee. In states with high tourism and high car rentals, it is often

required that the owner of the vehicle be held liable in order to protect accident victims in cases in which the vehicle is insured but the actual driver is not. At the time the law was enacted, sixteen states had such laws.

- *Preemption of open government laws* The Homeland Security Act of 2002 created the new Department of Homeland Security (DHS), the biggest government reshuffling since 1947. The law also contained a section entitled Critical Infrastructure Information (CII), intended to create incentives for companies to "voluntarily" submit information about the vulnerabilities of "critical infrastructure." To accomplish this result, the law preempts state and local disclosure laws and creates an overly restrictive information program that will provide corporations secrecy and immunity, and prevent state government action to protect the public.
- *Preemption of environmental law* Energy Policy Act of 2005 (Pub. L. No. 109-58) scraps state and local government's authority over environmental and land use policy. For example, the act limits the extent to which states can require cleaner burning fuels in automobiles. The bill also takes the authority to approve the siting of transmission lines out of the hands of state and local government.

Preemption Through Regulation

Not only is state authority being threatened by congressional action, but the White House has also limited the role of the states through regulation and executive decisions. Perhaps the most troubling trend in regulatory preemption is being called "stealth tort reform"--the decision to preempt the ability of state courts to hear tort suits arising from cases covered by the federal regulation. U.S. PIRG has been documenting many such cases.

Floor, Not Ceiling

Federal law and regulation is able to solve national problems through national solutions that impact and benefit all members of society. At the same time, states have long been pioneers in advancing groundbreaking social policies. Allowing states the flexibility to meet particular local needs while requiring a basic level of public protection for all citizens has long been an important issue for the balance of power between federal and state governments.

The answer has long been "floors, not ceilings"--turning to the federal government for the base level of protection, and allowing the states to offer their citizens more stringent safeguards. Without any sufficient showing of a compelling need for national uniformity, these acts of Congress and the White House turn the federal/state balance around, suppressing states' abilities to provide services and protections that go above and beyond

federal laws and regulations.

OMB Watch Tells Congress PART Should Remain Insignificant

OMB Watch told Congress today that the Bush administration's Program Assessment Rating Tool (PART) draws biased conclusions about federal program efficacy and should thus continue to be largely ignored by Congress.

Adam Hughes, OMB Watch's director of federal fiscal policy, testified on PART before a Senate Homeland Security and Government Affairs Subcommittee, during a hearing held by Committee Chair Tom Coburn (R-OK) to investigate why PART is not more widely used by Congress.

Hughes raised concerns that PART is inherently biased toward OMB's perspective, and ultimately that of the White House, regarding expectations for success. Because of its subjectivity, according to Hughes, PART allows OMB considerable power to manipulate political and policy outcomes.

"Both by the design of the tool and as the mechanism is implemented, PART systematically ignores the reality of federal programs and judges them based on standards that are deeply incompatible with the purposes that federal programs are expected to serve," Hughes explained. "As one agency contact described it, PART assessments are tantamount to a baseball coach walking to the mound to remove his pitcher and then chastising him for not kicking enough field goals."

Hughes went on to describe PART as transferring to the White House authority over an area of government that is the purview of Congress under the U.S. Constitution. Hughes also maintained that Congress already has the tools to execute necessary program oversight, evidenced by the fact, which Coburn was quick to point, that Congress largely ignores PART scores in the budget process.

"PART continues a troubling trend we have seen in other executive branch initiatives and even congressional proposals--namely, a trend to arrogate increasing power to the White House, even in areas that by constitutional design have been committed to Congress," Hughes testified. "For this reason alone, PART should be approached extremely cautiously by those outside the administration."

Clay Johnson, deputy director of OMB and a main proponent of the PART system, also testifying at the hearing, conceded that PART was a tool with many deficiencies. He

repeatedly told the committee that PART was a work in progress, admitting that PART was a very "blunt" tool for identifying inefficient programs in need of help.

Eileen Norcross with the Government Accountability Project of the Mercatus Center at George Mason University testified as well, supporting PART and encouraging Congress to give more weight to PART scores. This should come as no surprise as the Mercatus Center was instrumental to PART's creation in 2001.

Hughes concluded by advising Congress to approach PART reviews with a high degree of skepticism and use the long-established congressional structures within the oversight, authorization, and appropriations processes to conduct more thorough program review and results investigations. You can read Hughes' full written testimony to the committee here.

Senate Rejects Estate Tax Repeal; Frist Likely to Turn to Costly 'Compromise'

Last week, Senate Majority Leader Bill Frist (R-TN) failed to garner enough support for a procedural vote to move forward with debate on estate tax repeal. The Senate's reject of the motion signals lawmakers may now have realized that their priorities should reflect those of their constituents and the pressing issues facing the country, not tax breaks for multi-millionaires.

The vote was a solid victory for proponents of not only the estate tax but of a progressive, fair, and responsible tax code generally. Nonprofit advocacy groups, labor unions, think tanks, community groups, and direct service providers joined forces in a show of a resounding support for the estate tax. Over 740 organizations from all fifty states signed-on to the Americans for a Fair Estate Tax Coalition letter to the Senate, urging lawmakers to preserve the estate tax. Tens of thousands of individual citizens sent emails and made phone calls in the two weeks before the vote to hold their senators accountable to the public interest.

The vote was also a win from all Americans, demonstrating that Congress might now be growing wary of taking billions of dollars per year from federal coffers at a time of high debt, significant human need, and social spending cuts.

The June 8 vote saw 57 Senators voting in favor of moving forward with debate, and 41 voting against the cloture motion. The Republican leadership needed 60 votes to move ahead with debate on the repeal bill. Sens. Max Baucus (D-MT), Blanche Lincoln (D-AR), Ben Nelson (D-NE), and Bill Nelson (D-FL) were the only Democrats to vote in favor of

cloture Sens. Lincoln Chafee (R-RI) and George Voinovich (R-OH) voted with a majority of Democrats against cloture. Two senators, Charles Schumer (D-NY) and John D. Rockefeller (D-WV) were not present. A number of Senators who were reported to be on the fence ended up voting against the motion to proceed, including Sens. Maria Cantwell (D-WA), Patty Murray (D-WA), Mary Landrieu (D-LA), Ken Salazar (D-CO), and Mark Pryor (D-AR).

While this vote is a significant victory for supporters of the estate tax, Republican efforts to kill the tax are not dead. While plans for full repeal may have finally run out of steam, GOP leaders will now likely turn their energies to a vote on "reform" that would be just as costly. Sen. Jon Kyl (R-AZ), the Senate GOP's point man on the estate tax, is now trying to sell his fellow senators on slightly different, yet equally detrimental, version of his previous "reform" proposal. His new plan includes a 15 percent tax on inherited wealth between $5 million ($10 million for a couple) and $30 million; for estates larger than $30 million the tax would be 30 percent. The Center on Budget and Policy Priorities reports that this plan would cost the Treasury nearly $800 billion from 2012 to 2021 when counting the cost of additional higher interest payments on the debt. This is very close to the cost of his earlier proposal providing a $5 million exemption ($10 million for couples) and a 15 percent tax rate. That proposal would have a ten-year cost of about $825 billion, coming close to the cost of full repeal- which is nearly $1 trillion over the same 10-year period.

It's unclear whether a legislative effort to gut the estate tax will emerge again this summer. Rumors have been circulating that Senate leaders could try to tie the estate tax to a separate piece of legislation that would be difficult to oppose. Two likely candidates for this approach are the immigration bill and the pension reform bill. While this scenario is unlikely, Sen. Frist could bring a compromise proposal to gut the tax to the floor at any time unless moderate senators remain steadfast in their opposition to measures that would cost the American people hundreds of billions of dollars in order to further enrich a handful of wealthy heirs.

It has also been reported that Kyl, Baucus and a group of moderate Democrats are meeting this week to discuss a compromise reform proposal. However, with Baucus also proposing a "reform" effort that would gut the estate tax, it is surprising that he is representing the Democratic caucus on this issue. If they fashion a compromise it could come to the floor immediately and they believe they would have the 60 votes needed for passage.

In his commentary on the estate tax vote, executive director Gary Bass explains the issue this way:

"OMB Watch remains nonpartisan, silent on the question of which party would

best run Washington. We are not, however, and cannot be, neutral on policy choices that harm our social and economic fabric. Repeal of the estate tax further shifts the tax burden onto the shoulders of working families. All of our elected leaders should be concerned with our nation's fiscal health and the maintenance of opportunity for all Americans, and, in honestly addressing these concerns, see the value of the estate tax...

...The 20-year campaign to repeal the estate tax will carry on, no doubt, like the well-funding machine it is. They will now adopt the language of "compromise" and "reform." Responsible lawmakers from both sides of the aisle, however, must bare in mind that, without offsets to pay for the changes, these proposals amount to nothing more than backdoor repeal and should be rejected accordingly."

Think Tank Focuses on Economic Security

The incongruity between Congress's priorities and the needs of average Americans was in stark contrast last week. As the Senate prepared to vote on estate tax repeal, the Center for American Progress held a briefing June 6 to explore the growing problem of economic insecurity facing many Americans.

Panelists speaking at the briefing were:

- Jared Bernstein, Economic Policy Institute economist and author;
- Louis Uchitelle, *New York Times* reporter and author;
- Paul Krugman, *New York Times* op-ed columnist and author: and
- Euguene Sperling, former national economic adviser to President Clinton and Center for American Progress fellow.

The rise of economic insecurity in America includes the growing risk individuals face concerning their wealth, and the diminished social safety net available to those who have fallen on hard times. The panelists touched on the ever-widening wealth gap, but also the shift, which has been stepped up in recent years, from public sector services to more selective and expensive private sector services.

Sperling defined an effective policy to counteract growing economic insecurity as one that can be judged as "lifting all boats." Policies created to spur enormous GDP growth are one thing; but, when these same policies provide opportunities and economic security across the income and wealth spectrum, they prove much more meaningful to the majority of Americans, according to Sperling.

Repeal of the estate tax, voted on June 8, is a prime example of policy that obviously

would fail to "lift all boats." On the contrary, the tax giveaway for less than 1 percent of the wealthiest Americans only lifts the yachts of the ultra-rich. While some claim repeal of the tax would give a boost to the economy and spur investment, in reality much of this would have simply further padded the savings accounts of heirs lucky enough to be born to extremely wealthy parents.

Panelist Jared Bernstein discussed policies, such as estate tax repeal, that leave the average American hanging. The policies, favored by the president and the current congressional leadership according to Bernstein, should be dubbed "YOYO economics," which stands for "you're on your own." He describes the trend toward YOYO economics in the following way:

"American politics have always been a balancing act between protecting the rights and privileges of individuals, and working together to meet profound challenges. Yet in recent years the emphasis on individualism has been pushed to the point where it is hurting our nation's standing in the world, endangering our future, and, paradoxically, making it harder for individuals to get a fair shot at the American dream."

Our economic policies, now more than ever, Bernstein explained, should reflect the model of WITT, rather than YOYO. WITT stands for "we're in this together." With WITT policies, individuals are not told by their government that they must fend for themselves. Instead of starving the beast--lowering federal revenue to the point that program cuts become necessary--Bernstein suggested a collaborative approach to meet these challenges and serve as the "rising tide to lift all boats."

Chemical Security: Moving Forward

The Senate will likely take another step this week toward establishing national security requirements for chemical facilities. The Senate Homeland Security and Government Affairs Committee is expected to mark up chemical security legislation during a business meeting this Wednesday, June 14. The frontrunner bill, co-sponsored by Sens. Susan Collins (R-ME) and Joseph Lieberman (D-CT), the Chair and ranking minority member, respectively, includes a number of important reporting requirements for chemical facilities.

The Collins-Lieberman bill, the Chemical Facility Anti-Terrorism Act of 2005, will require chemical plants and other facilities storing large quantities of hazardous chemicals to develop vulnerability assessments, security plans, and emergency response plans, all of which would be sent to the Department of Homeland Security (DHS) for review and

approval.

As previously reported in *The Watcher*, the Collins-Lieberman bill fails to include a requirement that safer technologies and procedures be implemented at facilities to reduce the threat of an accident or a terrorist attack. The bill does, however, include important public transparency and accountability requirements.

Sens. Frank Lautenberg (D-NJ) and Barack Obama (D-IL), as previously reported, have introduced the only other chemical security bill currently before the Senate. The Lautenberg-Obama bill, The Chemical Security and Safety Act, includes strong requirements that facilities consider inherently safer technologies. The bill also establishes a key role for the U.S. Environmental Protection Agency (EPA) in implementing chemical security requirements.

Some of the stronger provisions of the Lautenberg-Obama bill will likely be offered as amendments to the Collins-Lieberman bill. Sen. George Voinovich (R-OH) reportedly will also offer several amendments aimed at weakening the public accountability provisions of the Collins-Lieberman bill, replacing the public reporting provisions with blanket secrecy for the entire chemical security program.

Supreme Court Restricts Whistleblower Protections

On May 30, the Supreme Court handed down a decision in *Garcetti v. Ceballos* that could provide a disincentive for future whistleblowers on the government's payroll. The 5-4 decision declared that public employees who report suspicions of corrupt or inept behaviors in the course of their duties are not protected under the First Amendment.

Garcetti involves the actions of Richard Ceballos, a deputy district attorney from Los Angeles. In 2000, during an investigation, Ceballos determined that a sheriff's deputy had mischaracterized basic facts in order to obtain a search warrant. He brought this breach of conduct to the attention of his superiors in a memo and, subsequently, in face-to-face meetings. Later that year, Ceballos was transferred and denied a promotion. He alleged that these actions were a reprisal for exposing police misconduct and filed suit, charging that his superiors had violated his right to free speech.

Justice Anthony Kennedy--joined by Chief Justice John Roberts and Justices Samuel Alito, Antonin Scalia, and Clarence Thomas--ruled against Ceballos. Kennedy wrote in the majority opinion that the First Amendment does not apply to speech made during the course of one's duty as a public official. The Court holds that "when public employees make statements pursuant to their official duties, the employees are not speaking as

citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." (The majority opinion argued that First Amendment rights continue to apply when employees are speaking as citizens outside the context of the workplace.) Furthermore, the majority concluded that sufficient protections for whistleblowers exist in statutory provisions on both the federal and state levels without invoking the Constitution.

In their dissenting opinion, Justices David Souter, John Paul Stevens, and Ruth Bader Ginsburg, saw the facts of the case in a very different light, arguing that state-level whistleblower statutes are too weak and poorly enforced to provide adequate protections. This position has long been echoed by whistleblower advocates, many of whom find even federal whistleblower protections weakened to the point of inefficacy. The justices also found that the majority's opinion makes an unjustified distinction between government employee speech made as a citizen and speech made pursuant with official duties. Often the government employee has the citizen's interests in mind when making speech that is pursuant to one's official duty, according to the opinion.

"Would anyone deny that a prosecutor like Richard Ceballos may claim the interest of any citizen in speaking out against a rogue law enforcement officer, simply because his job requires him to express a judgment about the officer's performance?" writes Breyer. Moreover, he asked, why would a government employee be protected in voicing an opinion about an official matter that he is not associated with, but not be protected in speaking about a matter for which he has an official duty? Breyer and Stevens issued separate dissenting opinions.

Many whistleblower protection advocates are concerned that the ruling will discourage whistleblowers from bringing misconduct to the attention of their superiors. Instead, it may force government employees intent on rooting out corruption to find ways to speak as concerned citizens to the news media and the public at large, because such actions would be protected under the First Amendment.

"Public employees should be encouraged to report misconduct," stated Peter Eliasberg, Manheim Family Attorney for First Amendment Rights at the American Civil Liberties Union (ACLU) of Southern California, in an release issued shortly after the ruling. "This opinion does the opposite and can only cause government employees who are weighing whether or not to expose wrongdoing to decide to remain silent for fear of losing their jobs."

The case has been referred back to the California federal appeals court, as the Supreme Court decision refers solely to the First Amendment violations alleged by Ceballos in his

memo and did not cover the events of the meetings or his earlier testimony.

Vice President Refuses to Disclose Classification Data

For the third consecutive year, the Office of the Vice President has refused to disclose information on its security classification practices, according to a report released last month. The refusal contradicts a presidential order to disclose data on classification and declassification, issued by President Clinton and amended by President Bush in 2003.

The National Archive's Information Security Oversight Office (ISOO) is required by Executive Order 12958 to produce an annual report on statistics and analysis of the security classification program. The 2005 Report to the President documented a decrease in the number of classifications, but it also notes that "The Office of the Vice President (OVP), the President's Foreign Intelligence Advisory Board (PFIAB), and the Homeland Security Council (HSC) failed to report their data to ISOO this year."

The missing information means the ISOO report is incomplete and may misrepresent the state of classification practices at the federal level.

President Bush increased the vice president's classification authority to that of the President in 2003. Vice President Cheney, however, has also refused to report his office's classification data since 2003, so there is no way to determine if this change in authority has resulted in any change in activity.

The Office of the Vice President asserts that the order does not apply to it, even though the office regularly complied with the order before 2003. The implementing directive for ISOO states, "Each agency that creates or handles classified information shall report annually to the Director of ISOO statistics related to its security classification program." An agency is defined as any "entity within the executive branch that comes into the possession of classified information."

Steven Aftergood of the Project on Government Secrecy at the Federation of American Scientists remarked that Vice President Cheney's decision "signals an unhealthy contempt for presidential authority and undermines the integrity of classification oversight."

Vice President Cheney's refusal to disclose this information is consistent with previous positions and actions taken by the White House to limit access to records. For example, the Vice President has vehemently refused to disclose information on the highly questioned Energy Task Force, even when Congress began an investigation and several court challenges were filed.

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Specter's NSA Bill Eradicates Fundamental Liberties

The White House and Sen. Arlen Specter (R-PA) are nearing a compromise on legislation that would authorize the National Security Agency (NSA) domestic spying program. The bill, unfortunately, as it currently stands, poses a severe threat to fundamental civil liberties.

Since the disclosure of the NSA's domestic spying program in December 2005 by *The New York Times* and on the heels of the revelations about yet another secret surveillance program, Specter has been working on a bill that would provide the president with the means to protect against terrorism without compromising "the very civil liberties he seeks to

safeguard."

Specter's National Security Surveillance Act of 2006 (S. 2453), however, does little to safeguard civil liberties. The bill includes a number of provisions that would eradicate protections against unreasonable searches and seizures that are protected in the Fourth Amendment.

Current law provides two exclusive means for receiving approval for wiretaps on an American citizen's communications. The government can either obtain a warrant for wiretapping under the probable cause requirement of the Fourth Amendment or receive a Foreign Intelligence Surveillance Act (FISA) order under a less stringent requirement. It should be noted that FISA orders are typically only issued for cases involving agents of a foreign power or suspected terrorists, thus the FISA court has long operated with greater flexibility on constitutional issues. The FISA Court is also considered highly deferential to the government's point of view, authorizing the vast majority of FISA order requests.

The Specter bill would provide another approval method for wiretaps. The bill states that the government can also receive communications of American citizens under "the constitutional authority of the executive." Essentially, the bill would allow the federal government to wiretap anyone's phone calls or read anyone's emails without judicial

approval or oversight. No longer would the government have obtain a court's approval to wiretap communications. Also troubling, the removal of the requirement of a search warrant or FISA order would be retroactive to the date that FISA was passed in 1978. The bill, if passed, would thus automatically make legal the NSA's warrantless spying program that dates back several years.

Specter falsely claims that his bill would require the government to go before the FISA Court--a secret court which issues surveillance orders--to justify the NSA domestic spying program. Instead, the government merely needs to claim that the spying program is lawful under the "constitutional powers of the executive," something that the White House has argued all along. If the government decides not to seek judicial approval from the FISA court, Specter's bill would establish a highly questionable process that violates fundamental constitutional principles.

Under the bill, the FISA Court could issue a 90-day authorization for a surveillance *program*, and unlimited reauthorizations. No other court in the country has ever allowed such an order, because it violates the constitutional principle of particularity -- that, when feasible, the subject and place of a search must have clear parameters.

Our nation's founders designed the Fourth Amendment to allow for *reasonable* searches, something that the courts have understood to mean searches that have well-defined boundaries over what and who can be searched and limitations on how long the search can

last. The authorization of an entire surveillance program would allow essentially unlimited searches of communications from broad sections of the public for an indefinite period of time.

The final troubling provision is that all cases, which challenge "the legality of an electronic surveillance program" would be automatically transferred to the FISA Court of Review. This would short circuit the legal process of legally challenging the administration's surveillance program. Currently, there are over 20 such challenges working their way through the courts.

Without the congressional oversight requirements that Specter scrapped long ago, the National Security Surveillance Act eliminates the checks and balances that ensure that executive power to search and seize communications is not abused in the fight against terrorism. The bill will undergo another round of revisions to accommodate the position of the White House and will be making its way through the Senate Judiciary Committee with the likely backing of Vice President Cheney and the administration.

Shays Looks to Limit State Secrets Privilege

Rep. Christopher Shays (R-CT) has introduced a bill to prevent the administration from abusing its all-powerful state secrets privilege. Based on the 1953 Supreme Court ruling in *Reynolds v. United States*, the state secrets privilege allows the executive branch to declare certain materials or topics completely exempt from disclosure or review by any body.

The state secrets privilege, rarely used by past presidents, has already been invoked 24 times by the Bush administration, more than any other administration over a six-year period, according to studies conducted by University of Texas-El Paso and the National Security Archive at George Washington University. In just five and a half years, the Bush administration has used this privilege almost half the number of times it was invoked between 1953 and 2001, when the combined use of 8 presidents -- Eisenhower, Kennedy, Nixon, Ford, Carter, Reagan, the first Bush and Clinton - amounted to 55 claims of state secrets. While in the past the power was used to keep specific documents from disclosure, recently the privilege appears to be invoked to deflect lawsuits against the government. It is a trend that has many concerned, including Shays.

As reported by *The New York Times*, the administration recently used the state secrets privilege to compel the courts to dismiss a lawsuit brought by a German man who had been held in Afghanistan for five months after being mistaken for a suspected terrorist with the same name. Khaled el-Masri, filed suit against George Tenet, the then-head of the Central Intelligence Agency and ten unnamed agency employees, challenging the CIA's practice of abducting foreign nationals for detention and interrogation in secret prisons overseas.

Additionally, the Justice Department has asked the courts to throw out three lawsuits

against the National Security Agency's warrantless domestic spying program. One suit has been brought by the Electronic Frontier Foundation against AT&T; the two suits were filed against the federal government by the American Civil Liberties Union and the Center for Constitutional Rights.

The state secrets privilege was also used to shut down a lawsuit by national security whistleblower Sibel Edmonds, an ex-translator for the Federal Bureau of Investigation, who was fired after accusing coworkers of security breaches and intentionally slow work performance. Edmunds, filed a whistleblower lawsuit against the federal government, *Sibel Edmunds v. Department of Justice*, which was dismissed by the D.C. Circuit Court after the U.S. Attorney General's office cite the state secrets privilege.

Essentially, in each of these cases the Department of Justice has used the state secrets privilege to shut down cases against the federal government, claiming that any discussion of the lawsuit's accusations would endanger national security. With a growing array of challenges to the government's handling of terror suspects and warrantless domestic wiretapping, target cases for this tactic are in far from short supply.

Shays believes that the state secrets provision has been used too frequently and with little public protection. In particular, he is concerned that whistleblower cases will continue to be rejected with the president employing the state secrets privilege. Accordingly, Shays has proposed language to the Executive Branch Reform Act of 2006 (H.R. 5112) that would limit the use of the state secrets privilege in blocking whistle-blowers' lawsuits. Specifically, the provision requires that courts rule in favor of a whistleblower claim if the government invokes the state secrets privilege to end the case. Basically, so long as an inspector general investigation supports the overall claim of the whistleblower and the government could no longer get a dismissal of the case by claiming state secrets privilege. Instead, under these provisions, the case would automatically be ruled in favor of the whistleblower without any public discussion of the details. In cases where no inspector general investigation has been conducted, the administration must explain to Congress why the use of the privilege is necessary and demonstrate that efforts have been made to settle the case amicably. The bill containing the Shays language was reported out of the House Government Reform Committee.

"If the very people you're suing are the ones who get to use the state secrets privilege, it's a stacked deck," said Shays, who has long been a proponent of limiting government secrecy.

Senate Strengthens Whistleblower Protections After High Court Decision

The Senate acted quickly last week to fill a gap in whistleblower protection law in light of a recent Supreme Court ruling which may have weakened First Amendment protections for

whistleblowers. The Senate passed the Federal Employee Protection of Disclosures Act (S.494), sponsored by Sens. Daniel Akaka (D-HI) and Susan Collins (R-ME), which would strengthen protections for federal government employees that expose government inadequacies.

As reported in the last issue of *The Watcher*, in May the Supreme Court ruled in *Garcetti v. Ceballos* that public employees who report suspicions of corrupt or mismanagement in the course of their duties are not protected under the First Amendment. The Court held that, "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline."

The Court's ruling compelled whistleblower advocates in the Senate to strengthen whistleblower protections.

"The need to act now was heightened because of last month's Supreme Court decision that limits whistleblower protection under the First Amendment," explained a statement issued by Akaka after the amendment's passage. "It's unacceptable for the courts to add another deterrence to federal whistleblowing."

The Whistleblower Protection Act of 1989 was intended to protect federal employees against reprisals for the exposure of government inadequacies. The Akaka-Collins Amendment modifies that law to make clear that all federal government employees are protected for "any" disclosure of government waste, fraud or abuse.

The Federal Employee Protection of Disclosures Act, according to Akaka's statement, also:

- ends the sole jurisdiction over federal whistleblowers cases of the Federal Circuit Court of Appeals by permitting multi-circuit review for five years;
- protects whistleblowers whose security clearance revocation is based on retaliation;
- provides the Office of Special Counsel with the independent right to file amicus briefs in federal courts; and
- codifies and strengthens the anti-gag provision that has been included in appropriations language since 1988.

The bill fails, however, to cover employees of intelligence agencies, including the FBI, CIA, Defense Intelligence Agency, National Imagery and Mapping Agency, and National Security Agency. The Executive Branch Reform Act passed earlier this year by the House would extend whistleblower protections to these employees.

The Federal Employee Protection of Disclosures Act was accepted by unanimous consent as an amendment to the FY 2007 Defense Department reauthorization bill (S. 2766). The amendment was co-sponsored by Sens. Joseph Lieberman (D-CT), Charles Grassley (R-IA),

Richard Durbin (D-IL) and Carl Levin (D-MI). The reauthorization bill was then passed by the Senate. Even though the House did not address whistleblower protections in its version of the defense department reauthorization bill, the issue will be taken up in the House-Senate conference.

Government Secretly Examining Financial Transactions

Yet another Bush administration secret program that gathers private information came to light last week. *The New York Times* on Jun. 23, much to the ire of the White House, broke the story of government monitoring of banking transactions involving thousands of Americans and financial institutions.

Following the Sept. 11 terrorist attacks, the Bush administration started gathering financial transaction information from the Society for Worldwide Interbank Financial Telecommunications (SWIFT) for short. SWIFT is a clearinghouse for international banking transactions, routing trillions of dollars a day between financial institutions.

While the Central Intelligence Agency (CIA) and the Treasury Department, which jointly operate the data-gathering program, have issued subpoenas for SWIFT data, those subpoenas are not for specific transactions. The Treasury Department, it has been reveals, at the same time is serving SWIFT broad 'administrative' subpoenas for millions of records at a time, a practice that troubles many civil liberties advocates, including the American Civil Liberties Union (ACLU).

In a Jun. 23 press release, the ACLU called the financial surveillance program "another example of the Bush administration's abuse of power." The statement went on to charge that "[t]he invasion of our personal financial information, without notification or judicial review, is contrary to the fundamental American value of privacy and must be stopped now."

However, the administration argues that safeguards have been put in place to protect privacy interests and the president has rebuked *The New York Times* for jeopardizing a valuable program by announcing its existence.

According to the Treasury Department, an outside auditing firm verifies that data searches are based on valid intelligence leads, and analysts must document the intelligence that justifies each search. In addition, the Treasury Department recently agreed to allow SWIFT representatives to be stationed alongside agency officials. This arrangement enables SWIFT representatives to block any search deemed inappropriate.

Safeguards notwithstanding, the administration's recent track record of sidestepping congressional oversight and expanding the scope of presidential authority to justify secret

surveillance doesn't help its case for this latest clandestine ease-dropping program.

In May, it was revealed that the National Security Agency (NSA) was secretly amassing the largest database ever created on the telephone calling habits of millions of Americans. News of the call history data mining program came as the NSA program of eavesdropping on international telephone calls without warrants remained, and remains, unresolved.

Lobby Reform Update: Shays, Meehan Introduce Bill, as Senate Reports on Charities Misuse

While the conference committee to reconcile House and Senate versions of lobby reform legislation remains in limbo, two House members have introduced a new, stronger lobby reform bill, and a Senate committee has called for an investigation into misuse of charities by Abramoff and others.

New Shays-Meehan Bill

On June 22, Reps. Christopher Shays (R-CT) and Martin Meehan (D-MA) introduced H.R. 5677, the Ethics and Lobbying Reform Act. The bill, an amalgamation of provisions supported by reformers that were left out of the House and Senate-passed bills, includes:

- Grassroots Lobbying Disclosure, which requires the disclosure of expenditures over specified thresholds by lobbying firms and nonprofits;
- Creation of an Office of Public Integrity, which creates an independent office to monitor and enforce ethics violations;
- Disclosure of Campaign Fundraising by Lobbyists, that requires registered lobbyists to disclose campaign contributions; and
- Revolving Door, which increases the ban on lobbying by former public officials from one year to two years.

The Senate appointed conferees on the lobbying bills weeks ago, but House Speaker Dennis Hastert (R-IL) has yet to name the House conferees. Shays and Meehan introduced their bill as Republican congressional leaders and their staff continue to attempt to hammer out the discrepancies between the House and Senate lobby reform bills before the conference committee meets. Shays and Meehan sent a letter, joined by Sens. John McCain (R-AZ) and Russ Feingold (D-WI), to the Senate conferees and House leadership urging them to adopt strong lobbying reform measures similar to those in the Shays, Meehan bill.

However, the conferees and leadership have been slow to move toward a resolution. A sticking point continues to be a provision in the House-passed bill designed to rein in independent 527 organizations. Senate Rules and Administration Committee Chairman Trent Lott (R-MS), who is also one of the Senate conferees, has said that he opposed putting

the 527 provision in this bill. Conversely, House Majority Whip Roy Blunt (R-MO) has stated, "My view is it's an essential part of the lobbying bill."

In the Senate: A Call for More Scrutiny of Nonprofits and Lobbying

A report by the Senate Committee on Indian Affairs, released the day that the Shays-Meehan bill was introduced, may put pressure on Congress to act on lobby reform legislation and provide more scrutiny of nonprofit activities. The report, which examined former lobbyist Jack Abramoff's relationship with six Indian tribes involved in gaming operations, notes that the tribes provided millions of dollars to Abramoff and to nonprofits at the suggestion of Abramoff and his partner, Michael Scanlon.

The report also examined the abuse of nonprofits by Abramoff and Scanlon for their personal financial gain. It cites numerous examples of Abramoff funneling money through nonprofit organizations such as the Abramoff-created Capital Athletic Foundation, or Grover Norquist's Americans for Tax Reform, leading the committee to question whether current Internal Revenue Service regulations regarding nonprofit organizations are sufficient.

The Committee, whose oversight is strictly focused on Indian Affairs, recommended that the Senate Finance Committee take up this issue. "The [Indian Affairs] Committee believes that the evidence it uncovered raises serious issues involving nonprofit organizations, not only with regard to compliance with existing federal revenue laws, but also with regard to whether existing federal revenue laws should be altered to prevent or discourage such activity," the report detailed.

Whether the Senate Finance Committee will take up the issue remains to be seen. Senate Finance Committee Chairman Charles Grassley (R-IA) has been conducting a broad probe of nonprofits and foundations, examining whether nonprofits have abused their tax-exempt status for political gains. This has included an examination of charities with link to Abramoff. The Indian Affairs Committee has sent over 100 pages of documents to Grassley that related to Abramoff-affiliated charities.

According to Sen. Max Baucus (D-MT), the ranking Democrat on the Finance Committee, "The Finance Committee continues to review documents provided by the Committee on Indian Affairs and related to non-profit groups with links to Jack Abramoff. This is being done as part of an ongoing, broad-scale look at whether tax-exempt groups are misused for financial or political gain. I expect that Finance Committee will act as our findings warrant."

Nonprofits Protest Barrier to Emailing Congress

A coalition of more than 100 nonprofits is protesting a new filter used by some congressional offices to block spam, arguing it also inhibits constituent communications. The filter, or

"logic puzzle" as it is called, requires senders to answer a question before a message is sent, making it more difficult for online advocacy campaigns that use forms.

A group of 105 organizations, spanning the ideological spectrum, have sent a letter to House and Senate congressional offices asking them to disable the so-called "logic puzzle", designed to stop email spam from reaching congressional email inboxes. The organizations, led by Consumers Union, National Taxpayers Union, and Earthjustice, argue that constituents should not be required to show a basic knowledge of math or English to express their concerns to their elected members of Congress.

"Congressional attempts to differentiate among constituent communications - accepting only unorganized communications but blocking communications where individuals are working together to deliver a strong message - raise dangerous questions about the infringement of constituents' First Amendment rights and are a disservice to constituents," according to the sign-on letter to Congress.

According congressional offices, the purpose of the program is to cut down on the amount of mass emails the offices receive daily. House offices currently can use Congress's 'Write Your Rep' service. In May the 'Write Your Rep' system added a filter to email communications, which typically involve a simple math problem. Under the new system, after a sender has already proven that he or she is a constituent of the member by providing his or her name and address, the sender is presented with a logic puzzle in order to prove the message is sent by a real person and not an email-generating program. House Administration Committee Spokesman Jon Brandt told *Roll Call* that 60 House offices use the logic puzzle, although one has discontinued its use. He also said "the committee is open to meeting with these groups to listen to their concerns..."

Rep. John Larson's (D-CT) office, which began using the logic puzzle last week, recently stated, "We were getting incredible amounts of email and a lot of it was from mass e-mails from some organization using technology to mask a grassroots campaign and it impaired our ability to communicate with constituents." On the decision to use the logic puzzle, Larson's spokesperson said, "It was a tough decision, because we obviously want to hear from our constituents. But we're limited in the amount of time and staff we have to answer some of these. I think Congress had to address this on a larger level."

The logic puzzle, which is also used by four Senate offices, is a response to a Congressional Management Foundation report that showed half of congressional staff surveyed believes identical e-mails are not sent with constituents' consent. The CMF study also showed that with the advent of the Internet and electronic communications, Congress received four times more communications in 2004 than in 1995. In 2004 the average office received over 200 million letters.

Many of the vendors that nonprofits use to organize their online grassroots communications

have already deployed a "work around" for the logic puzzle. According to the vendors, no email communications from constituents have been lost. At issue for the vendors is the fear that the initiation of the logic puzzle has begun a technology "arms race" with the House and Senate Information Resources Departments.

Since the anthrax attacks of 2001, regular mail to Congress goes through lengthy inspections before delivery, leaving email and fax as the most practical methods of reaching lawmakers. The coalition of nonprofits sees requiring constituents to answer any sort of question, regardless how simple, as another barrier to communicating with a Congress that is already difficult to reach.

An American Civil Liberties Union statement on the logic puzzle explained, "Congress long ago did away with the literacy test qualification to vote. Apparently, Members of Congress acknowledge you shouldn't have to pass a test to vote for them, but they don't want you to contact them without taking a quiz".

Nonprofits Sue Defense Dept. Over Surveillance

On June 14 the American Civil Liberties Union (ACLU) filed suit against the Department of Defense (DOD) on behalf if itself and six state affiliates over DOD's failure to respond to their Freedom of Information Act (FOIA) requests. The request seeks records DOD has collected on over two dozen groups critical of the administration's war policies.

On June 14 the American Civil Liberties Union (ACLU) filed suit against the Department of Defense (DOD) on behalf if itself and six state affiliates over DOD's failure to respond to their Freedom of Information Act (FOIA) requests. The request seeks records DOD has collected on over two dozen groups critical of the administration's war policies. With the ACLU of Montana and Pennsylvania recently filing FOIA requests seeking information on surveillance of peace groups in their states, requests have been filed for over 150 organizations and community leaders in 20 states in total.

The ACLU complaint was filed in the U.S. District Court for the Eastern District of Pennsylvania. The plaintiffs are the national ACLU and affiliates in Florida, Georgia, Rhode Island, Main, Pennsylvania and Washington. The FOIA requests sought information on DOD surveillance of local groups and leaders as well as the ACLU, the American Friends Service Committee, Greenpeace, Veterans for Peace, and United for Peace and Justice.

The FOIA requests were filed after it was revealed in February that since 2003 DOD had been collecting information on peace groups for a database known as the Threat and Local Observation Notice (TALON). DOD shared the information with other government agencies. In an ACLU statement, defense attorney Ben Wizner maintained, "The U.S. military should not be in the business of maintaining secret databases about lawful First Amendment

activities. It is an abuse of power and an abuse of trust for the military to play a role in monitoring critics of administration policies."

Still more state and local groups are requesting information on TALON surveillance and spying by other government agencies. The Jun. 8 FOIA request by the ACLU of Montana seeks information collected by DOD, and the Departments of Justice and Homeland Security about a number of groups, including the Helena Peace Seekers, Taking Action for Peaceful Solutions of Butte, and the environmental group Friends of the Bitterroot. The ACLU press release notes that more than 30 Pennsylvania organizations also filed FOIA requests on Jun. 14, because "they fear they may have been monitored because they have publicly opposed the war in Iraq."

FOIA requests previously filed by the ACLU have yielded interesting results. In May the ALCU released documents showing the FBI used counterterrorism resources for surveillance of the School of the Americas Watch, a Georgia-based group opposed to the U.S. Army School of the Americas, an institution known for training notorious Latin American dictators, including Manuel Noriega. The group conducts an annual vigil at Fort Benning, Georgia, where the school, now renamed the Western Hemisphere Institute for Security Cooperation, is located. The group's peaceful protests included acts of civil disobedience outside the fort, earning the group "priority" status for counterterrorism monitoring. An ACLU press release notes that "[c]learly the FBI knew it was spying on a peaceful demonstration, activity protected by the First Amendment."

Muslim Charity's Prosecution Reveals Questionable Evidence

Criminal prosecution of the Holy Land Foundation (HLF), a Texas-based Muslim charity shut down by the U.S. Treasury Department in 2001, has provided a glimpse into the government's use of evidence to justify seizure and freezing of charitable assets in the name of the war of terrorism. Pre-trial filings shows sanctions have been imposed against charities and their officials for contacting organizations that are *not* designated by the government as supporters of terrorism. The case also appears to depend on questionable foreign intelligence information and faulty translations.

In December 2001, the Treasury Department designated HLF as a supporter of terrorism, under authority granted in Executive Order 13222 and the PATRIOT Act. HLF was accused of funneling millions of dollars to Palestinian organizations allegedly controlled by Hamas, designated a terrorist organization in 1995, and of providing funds to families of suicide bombers. HLF officials denied the charge, saying the organization only provided humanitarian relief, with a focus on Palestinian refugees and victims of armed conflict in Bosnia, Kosovo, and Turkey. The FBI seized more than $5 million in assets and all of HLF's documents and property.

The organization's civil lawsuit seeking to overturn the designation was unsuccessful, owing mainly to the appeals court not allowing review of the Treasury Department's evidence and HLF beng unable to present evidence on its own behalf. In July 2004, HLF requested an investigation by the Department of Justice Inspector General, alleging the FBI used erroneous translations of sensitive Israeli intelligence material as the crux of its case. Later that day, the Justice Department unsealed an indictment against HLF and its seven top officials, charging them with money laundering and providing material support to Hamas. The case is scheduled for trial in February 2007.

In pre-trial filings in the criminal case, the prosecution disclosed it has 21 binders with over 8,000 pages of Israeli intelligence information, according to the *Los Angeles Times*. The Israeli government controls what prosecutors can reveal to the public. Earlier this year 14 volumes of classified material were released to defense attorneys by mistake, and the judge refused the prosecution's motion to compel return of the documents. Instead, they now sit in the judge's office. While defense attorneys are forbidden from commenting on the contents of the files, the *Dallas Morning News* reported that "the information bolstered their case."

The FBI documents rely on the Israeli material to establish two claims central to the prosecution: grants were made to local charities that support Hamas, and funds were earmarked for families of suicide bombers. HLF grants to local charities, known as "zakat committees," supported a wide variety of activities, including hospitals. Zakat committees are grassroots traditional organizations that identify people in need and distribute charitable funds. None of the zakat committees named in the indictment have been designated as supporters of terrorism by the Treasury or State Departments.

The FBI claim is apparently based on a FBI memo that quotes the manager of HLF's Jerusalem office as saying the money was "channeled to Hamas." However, HLF attorneys say the Arabic to Hebrew to English translation should correctly say there is "no connection."

The indictment also claims that funds were earmarked for families of suicide bombers, but the allegations are based on faulty translations and incorrect use of the term "martyr," according to the defense. In the Middle East, defense attorneys explain, the term "martyr" refers to a broad category of people who die an early and unnatural death, not just suicide bombers.

The *Los Angeles Times* review of about 400 photos in an "orphans book" the FBI seized from HLF shows that 69 were identified as children of "martyrs." According to a sworn statement by the former head of HLF's office in Gaza, who interviewed all 69 families, only four died making bombs and 12 were killed by Israeli troops. Eight were killed by Palestinians for allegedly collaborating with Israel. The remaining "martyrs" were victims of robberies, heart attacks, accidents and other non-political deaths.

As the criminal prosecution moves forward charities will have an opportunity to see whether secret, unchallenged evidence used to shut down charities can withstand the rigors of the rules of evidence and due process under American law. Whether charities can rely on government watch lists to identify people and groups they should avoid will be at the forefront, as the government tries to send HLF's leaders to prison for assisting non-listed groups.

Sunset Commission Update: Delay in House, Rush in Senate

While House leadership announced that sunset commissions would come up for a vote later than initially predicted, the Senate unexpectedly set the stage for its own consideration of a sunset commission proposal.

OMB Watch reported conflicting accounts two weeks ago about the timing for unveiling, and bringing to a vote, a final House package on sunset commissions. At the time, House GOP leadership suggested that a vote could happen imminently, while Hill sources speculated that leadership was being overly optimistic.

The latter proved to be the case. According to BNA's subscription-only *Daily Report for Executives*, the negotiations over a final proposal continued on several important details -- including whether the Department of Defense would be exempted from the sunset commission's purview.

Now, House leaders report that a House bill will come up for a vote in the first couple of weeks after Congress's July 4 recess.

Meanwhile, the Senate unexpectedly moved forward with its own sunset commission proposal. Sen. Judd Gregg (R-NH), chairman of the Budget Committee, unveiled the "Stop Over Spending Act" (S. 3521), a potpourri of budget process reforms with features that include attacks on entitlements, a line-item veto, and a sunset commission.

The Gregg sunset commission language is similar in most respects to the proposals developed by Rep. Todd Tiahrt (R-KS) and Sen. Sam Brownback (R-KS), the chief differences being:

- no exemptions for the Department of Defense, entitlement programs, or any other programs;
- charging the commission to produce four separate reviews and recommendations, each covering 25% of the federal programs in question; and
- adjusting the language from the Tiahrt/Brownback bills that would codify White House performance appraisals by acknowledging performance indicators that cannot

easily be measured.

Click here for a quick overview of the sunset commission proposal in the Gregg bill.

The Senate Budget Committee reported out the bill on a party line vote, with Democratic members offering what they called the "Do Your Job Amendment," to underscore the fact that the commission called for in the bill would usurp Congress's rightful role and responsibility for oversight. The amendment was rejected.

Prospects for the Gregg bill are uncertain, although reports are trickling out that Senate Majority Leader Bill Frist (R-TN) may be considering a variety of options, including breaking the Gregg bill into separate pieces, and that House GOP leadership has expressed interest in the concepts in Gregg's bill.

Because of these separate developments, public interest groups across the country made an early show of force by sending an opposition statement to each chamber, signed by 278 national, state, and local organizations.

Measures to Reform Budget Process Move in Congress

Both chambers of Congress are moving forward on measures centered around budget process changes, with a focus on giving the president line-item veto authority. The House passed the Legislative Line Item Veto Act (H.R. 4890) 247-172 on Jun. 22, and the Senate Budget Committee reported out a broader budget reform bill on Jun. 21 that included presidential line-item rescission authority.

The Senate bill, called the Stop Over Spending Act (S. 3521), also includes:

- Caps on discretionary spending for three years that would likely force large domestic discretionary spending cuts unless they are ignored (as has been the case in supporting the wars in Iraq and Afghanistan);
- Revival of the Gramm-Rudman-Hollings automatic across-the-board spending cuts when the deficit hits a certain percentage of GDP. This provision would once make Social Security “on-budget,” meaning its surplus would be counted when calculating the deficit. Thus, Social Security would once again mask the true size of the deficit and paying for general government operations;
- Establishment of two non-elected commissions to review federal programs, including entitlement programs, that could transform or eliminate virtually any program in government;
- A move towards biennial budgeting; and
- Changes to the budget process that would reduce transparency.

Neither bill includes what many feel are necessary, common-sense budget process reforms (e.g. the restoration of PAYGO rules that would apply equally to spending and taxes). Senate Democrats have suggested additional budget reforms not currently being considered, such as including the cost of war instead of paying for it through supplemental spending bills. Many have supported using the reconciliation process, which is how the Bush administration has successfully enacted most of its big tax cuts, *only* for deficit reduction. Democrats have also called for keeping Social Security off-budget to protect the trust fund.

With so many controversial provisions, the Senate bill's fate is uncertain. If Senate Majority Leader Bill Frist (R-TN) decides to break the bill up, it seems almost certain that the first issue to be debated will be the line-item veto. That debate will undoubtedly be contentious with most Democrats opposed to handing over such authority and increasing the executive branch's "power of the purse."

Back From the Dead: Estate Tax "Compromise" Could Move in Senate Soon

The House voted last week to approve an estate tax "compromise" that is, in reality, backdoor repeal of the tax. The vote clears the way for another Senate vote on the estate tax, following the Senate's rejection of repeal earlier this month.

On June 8, the Senate rejected a motion to proceed on debate for full repeal of the estate tax. Given the Senate was at least three votes short of proceeding with permanent repeal, Senate Majority Leader Bill Frist (R-TN) felt it was time to move on estate tax "reform." Since tax bills must come from the House, Frist asked GOP leaders there and House Ways and Means Chair Bill Thomas (R-CA) to move a "reform" bill in the House that could then be taken up in the Senate before the July 4 recess.

Thomas flew into action, moving the Permanent Estate Tax Relief Act (H.R. 5638). The bill would increase the exemption level, under which no estate tax is paid, to $10 million for couples ($5 million for individuals). Estates valued between $5 million and $25 million would be taxed at the capital gains rate, currently 15 percent; estates worth more than $25 million would be taxed at double the capital gains rate or 30 percent.

During debate over the bill, Thomas made it clear that this was not a bill on which the House was willing to negotiate in conference. Instead, he repeatedly said this bill must be passed by the Senate in the form that the House passes —a take-or-leave-it bill. This emphasis may have been necessary in order to garner the support of a number of House conservatives that initially did not want to vote on anything but permanent repeal. Even though this “reform” effort is nearly just as expensive as permanent repeal (total repeal costs around $1 trillion; this would cost about $823 billion), some conservatives found compromise to be a bitter pill to swallow. Conservative advocacy groups were split on whether to support reform over

repeal, sending conflicting messages on the new strategy. They were particularly concerned with linking the estate tax rate to the capital gains rate, a rate that would go up if current tax cuts are not extended.

Nonetheless, the Thomas bill passed handily in the House. Surprisingly, however, its final vote was nearly identical to the House vote on permanent repeal. In other words, this type of reform, which is repeal in all but name, did not change the political dynamic. Forty-three Democrats voted with all but two Republicans in the 269-156 vote. This was roughly the same vote as on permanent repeal in the House.

Recognizing that this "reform" bill is less than a meaningful compromise, Thomas added a sweetener to the bill in hopes of garnering additional Senate votes. He added a timber tax break supported by the timber industry an important political force in Washington, Louisiana, and Arkansas -- key states in the Senate vote on the estate tax. The timber tax break would allow timber companies to subtract 60 percent of their tree-cutting income from tax. The provision, which would cost $940 million, would last two years and then sunset unless renewed. Citizen for Tax Justice developed a summary of the tax break and noted that a company with a healthy profit from its paper sales could avoid taxes all together.

Cost of the Permanent Estate Tax Relief Act

According to the congressional Joint Committee on Taxation, the total cost is roughly 80 percent of permanent repeal, depending on assumptions used:

- It costs $279 billion over the next 10 years.
- Between 2012 and 2021, the first full 10 years, it will cost $602 billion and another $160 billion for interest — a total of $762 billion
- If you assume the capital gains 15% tax rate is extended (it is currently scheduled to expire), then the 10-year cost is $823 billion.

  Full repeal of the estate tax is around $1 trillion over the first full 10 year period.

So now the action turns to the Senate, where Frist took procedural steps to bring the House bill up this week. Late this afternoon, however, Frist announced there would be no vote on the bill before the July 4 recess. A number of observers believe that the surprising development could only mean that Frist still lacks the 60 votes needed to proceed with debate. Sen. Ron Wyden (D-OR), who has shifted from supporting repeal of the estate tax to

wanting reasonable reform, noted that a bill that comes in at three-quarters or 80 percent of the full cost of repeal will be a tough case to make. Wyden told reporters last week, "I get the sense, for swing senators, anything that is upwards of 50 percent of the cost is a great leap."

Nonetheless, there is enormous pressure on a handful of Democratic senators to switch

their votes, particular Maria Cantwell (WA), Patty Murray (WA), Mary Landrieu (LA), Mark Pryor

(AR), and Ken Salazar (CO). At the same time, the compromise could lose some Republican votes, including Trent Lott (R-MS) and Jeff Sessions (R-AL), who have been outspokenly determined to see no less than full repeal.

Sessions recently stated, "If a compromise does not really eliminate the confiscation that occurs then I'm not sure that I'm supportive of it. And some of the things I'm hearing probably are not sufficient to satisfy my thoughts."

If Frist again fails to find his 60 votes, he can try to ram the House bill through the Senate by attaching it to important legislation as part of the conference report. The only way to stop it then would be to vote against the whole bill, including the important legislation.

House Passes Half-Hearted Disclosure Bill, Alternative Remains Popular in Senate

The House passed legislation last week that would provide for a free, searchable database to disclose information about government grants. H.R. 5060 sponsored by Reps. Roy Blunt (R-MO) and Tom Davis (R-VA) passed the House on a voice vote on June 21, under suspension of the rules. The bill does not address disclosure of federal contracts, which accounted for some $339.7 billion in federal spending in 2004 alone.

Meanwhile, a Senate bipartisan bill to create transparency for both grants and contracts, The Federal Funding Accountability and Transparency Act, continues to enjoy bipartisan support. Its sponsors, Sens. Tom Coburn (R-OK), Barack Obama (D-IL), Tom Carper (D-DE), and John McCain (R-AZ), are working closely with OMB and other stakeholders to create a meaningful alternative to the Blunt bill. Coburn expects to hold a hearing on the bill some time this summer in his Federal Financial Management, Government Information and International Security Subcommittee.

OMB Watch has made available on its website analyses of the House grants disclosure bill and the Federal Funding Accountability and Transparency Act.

Congress Drops the Ball on Minimum Wage Again

Congress failed last week to raise the federal minimum wage which has stagnated for nearly a decade. The failure to act means its unlikely American workers will see a minimum wage increase any time soon. In the Senate, two measures to raise the minimum wage were voted down. In the House, an appropriations bill that contains a minimum wage increase is being

kept from the floor, and Republicans have simultaneously rebuffed a Democratic effort to link an increase in the minimum wage with a bill that would nearly repeal the estate tax.

In the Senate, two amendments to the Defense Appropriations Bill were defeated that would have raised the minimum wage. Sen. Edward Kennedy (D-MA) offered an amendment that would have raised the minimum wage from the current $5.15 to $7.25 over two years: it would have gone from $5.15 to $5.85 beginning 60 days after the legislation was enacted; to $6.55 one year later; and to $7.25 a year after that. The amendment, which needed 60 votes for passage, was defeated 52-46 on Jun. 21.

The other amendment, offered by Sen. Mike Enzi (R-WY), would have increased the minimum wage to $6.25 over 18 months and was bundled with a number of other provisions affecting the Fair Labor Standards Act. The amendment was defeated 52-46 and again failed to garner the requisite 60 votes.

In the House, Minority Whip Steny H. Hoyer (D-MD) succeeded in attaching a minimum wage hike to the Labor, HHS, and Education Appropriations Bill when his amendment was adopted by the House Appropriations Committee on a 32-27 vote. Because Republican leaders in the House are unsure if they can successfully remove the amendment on the floor, however, House Majority Leader John Boehner (R-OH) is blocking the bill from coming to a floor vote.

Democrats also attempted various parliamentary tricks to add a minimum wage increase to a bill that "reforms" the estate tax, a tax on super-wealthy estates. In each maneuver, Boehner and the GOP majority thwarted them.

In contrast to the GOP leadership, the American public overwhelmingly favors a minimum wage increase. In fact, most Americans would be more likely to vote for a Congressional candidate who favors increasing the minimum wage.

It's easy to understand why a majority of Americans would like to see an increase in the minimum wage. According to a Center on Budget and Policy Priorities analysis:

- The federal minimum wage has remained at $5.15 for nine years.
- Since its last increase in 1997, the minimum wage has lost 20 percent of its value.
- The minimum wage is at its lowest level in terms of purchasing power in fifty years.
- At 31 percent, the minimum wage is at its lowest as a share of the average American wage since 1947.
- It takes a full day of work for a minimum-wage worker to buy a tank of gas.

Figure 1: Real value of the federal minimum wage, 1950-2004

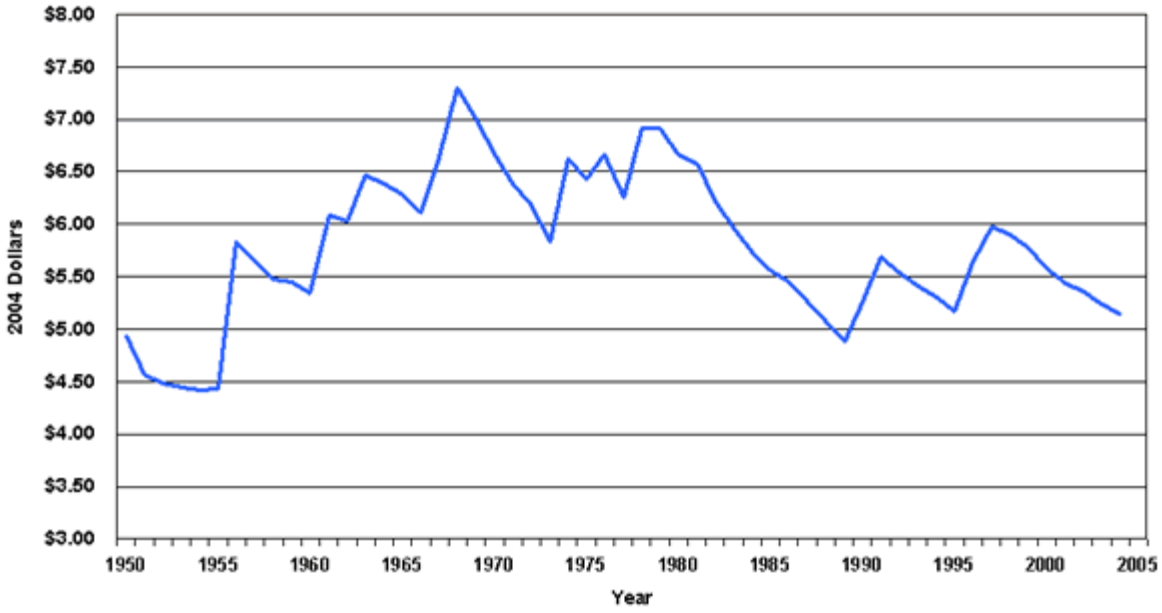

Chart courtesy of the Economic Policy Committee

House Saves Program for Measuring Results of Government Assistance

The House voted Jun. 13 to partially fund the Census Bureau's Survey of Income and Program Participation (SIPP), saving what is considered an essential tool for assessing how well government assistance programs are working.

The President's FY2007 budget omitted funding for the program, but Rep. José Serrano (D-NY) succeeded in gaining approval for partial funding in the FY2007 Science, State, Justice and Commerce Appropriations Bill. The Serrano amendment calls for $10 million for the program, falling about $30 million short of full funding, but, thanks to Serrano, the SIPP is on a path to moderate preservation.

The program, which began in 1984, gauges how well, or how poorly, government assistance programs deliver on their promises, by providing comprehensive information about such programs, and the people they are designed to help. The Census Bureau initiated the SIPP to "collect source and amount of income, labor force information, program participation and eligibility data, and general demographic characteristics to measure the effectiveness of existing federal, state, and local programs."

The SIPP data collection program is unique in that it provides access to information not only on program participation, but also data on income, wealth, and various other measures of

economic wellbeing. The SIPP is considered a superior data set because, unlike similar government income surveys, it tracks the same families over a period of two to four years. It produces a much clearer picture of how American families are progressing.

The SIPP has proven to be an invaluable tool for policy makers. Its' unrivaled scope and depth of data have enabled government program managers, researchers, journalists, and politicians to better evaluate and judge government programs. The SIPP has provided insight into areas of American economic and social concerns such as health insurance coverage rates, immigration, unemployment and pensions, welfare reform effects, the Food Stamp Program, and poverty rates.

With the House having decided to at least partially fund the SIPP, it is now up to the Senate to save the program as it takes up its Science, State, Justice and Commerce Appropriations Bill.