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In This Issue

The Long, Downhill Road to a 2011 Budget

Appropriations for fiscal year (FY) 2011 are now six months late. The fiscal year began on Oct. 1, 2010, but the nation is not much closer to having a budget than it was back then. As Congress comes face-to-face with the expiration of the current stop-gap spending bill, the budget's downward march may have stopped, but the possibility of a government shutdown still lingers.

The FY 2011 budget season began all the way back in February 2010 when President Obama released his yearly budget proposal. The big news then was that his budget included a three-year freeze, and although his proposal represented a $39 billion budget increase relative to FY 2010, some argued that increase was too small. The president's budget had a more lasting effect as a high-water mark. Since then, no politically feasible proposal has gone above the president's budget, and all have proposed at least some amount of cuts.

After the release of the president's budget proposal, all eyes turned to Congress, which, according to the law that sets the budget process, is supposed to pass a budget resolution in short order. This document establishes the upper boundaries of the year's budget and allocates funding levels to the appropriations subcommittees, which then create the yearly appropriations bills. A budget resolution is an integral part of the budget process and is supposed to be passed by both houses by April 15.

However, by March 2010, it was becoming clear that Congress would have a tough time passing a budget resolution. The main culprit was the House. The then-Democratic House had just finished the health care reform bill, and its more moderate members, particularly the Blue Dog faction, were watching their support wane back home. The last thing they wanted to do, according to press reports at the time, was vote through a "record breaking" budget with large deficits (thanks to inflation, every year usually sees a "record breaking" budget). Since Congress can vote through appropriations bills without a budget resolution, the House appeared inclined to not pass one.

The House's ambivalence echoed loudly in the Senate. That chamber reportedly refused to consider a budget resolution unless the House moved first. If the House would not pass a budget resolution, the thinking went, moderate Democratic senators would have no incentive to take a politically tough vote on a budget resolution containing a large deficit. Instead, holding individual votes on each of the twelve appropriations bills that make up the yearly budget seemed like a better alternative, since twelve votes on smaller bills would be easier than one big vote.

As a result, the Senate ended up passing a resolution only through its Budget Committee in April 2010. There was no floor action on the resolution. The House never even considered a resolution in committee and instead ended up passing a "budget enforcement resolution," a toothless, one-year budget resolution, in July 2010, which did not address long-term deficit issues. Both the House and the Senate resolutions contained cuts of around $7 billion, relative to the president's budget proposal. Overall, the resolutions would have resulted in an increase of about $30 billion compared to the FY 2010 budget.

With no budget resolution agreed to by Congress, uncertainty reigned on Capitol Hill. It was unclear how big of a budget Congress would be willing to consider. Into this void stepped two members of Congress: Rep. Pete Sessions (R-TX) and Sen. Claire McCaskill (D-MO). In March 2010, the two joined forces to create their own version of a budget resolution. Their proposal set top-line numbers for FYs 2011, 2012, and 2013, which were enforced by strict discretionary spending caps, and set very low limits for the amount of emergency spending in any given fiscal year. The Sessions-McCaskill proposal was $34 billion less than the president's request (representing a slight increase over FY 2010 levels), cuts far deeper than the ones the House and Senate were debating at the time, and groups like OMB Watch fought vociferously to make sure it did not become law. After contentious floor debate, the proposal narrowly failed in the Senate, losing by only a handful of votes.

With the demise of Sessions-McCaskill and the House and Senate reluctant to pass a budget resolution, Congress was left without a credible budget plan, and the entire process came to a standstill. Both houses worked sporadically on the appropriations bills but made little progress.

By the close of the last fiscal year in September 2010, Congress had not passed any appropriations bills for this fiscal year, and there was no end to the process in sight. Instead, Congress resorted to passing a series of continuing resolutions (CRs) to fund the government at FY 2010 levels.

Everything changed in November 2010 with the election of a new Republican House. Republicans claimed they were elected with a mandate to cut spending and vowed to block any spending proposals that did not include drastic cuts. Earlier in the year, House Republicans had released a campaign manifesto, "A Pledge to America," which called for a return to pre-stimulus, pre-bailout budget levels and an immediate $100 billion cut in the FY 2011 budget. Even the previously controversial Sessions-McCaskill proposal was deemed insufficiently bold.

Despite the Republicans' rhetoric, Democrats still controlled both houses of Congress for another two months, leaving some hope that they could pass a FY 2011 budget in a lame-duck session. Democrats tried to rally support for an omnibus package, combining all twelve appropriations bills into one giant bill, but they failed to win over any Republicans. Any deal needed Republican support to clear the Senate, and Senate Republican leadership decided they would rather wait for the new Congress, when they would control the House and have a larger minority in the Senate, than finish the FY 2011 budget in 2010.

This decision would drag the budget process out another four months. In February, the new Republican House leaders previewed their budget plan for the rest of the fiscal year, which cut $35 billion from the president's original request. Senate Majority Leader Harry Reid ridiculed the number, calling it "unworkable." House freshmen balked at the plan, saying that the Pledge called for $100 billion in cuts and that the House Republicans needed to stick to their campaign promises. Facing a revolt from the rank and file, House leadership scrambled to find new cuts, and early on a Saturday morning, they released a revised budget plan, H.R. 1. Without holding any hearings on potential changes, the House bill would cut $100 billion from the president's FY 2011 budget proposal, representing a $61 billion cut from FY 2010, a level House leadership claimed met the promise contained in the Pledge.

H.R. 1 easily passed the House over strident Democratic opposition but met overwhelming opposition in the Senate. The Senate responded with a seven-month CR, crafted by Senate Appropriations Chair Daniel Inouye (D-HI). That CR contained far fewer cuts than H.R. 1 but continued the steady path downward from the president's budget request. Attempting to meet Republicans half-way between H.R. 1 and the president's request, Inouye's proposal cut $51 billion, a $12 billion decrease from FY 2010 levels. Despite this gesture, Inouye's proposal failed to pass the Senate, falling by an even larger margin that H.R. 1.

With both H.R. 1 and the Senate's seven-month CR dead, prospects for some kind of a compromise are slim. Congress has continued to pass short-term CRs, making significant cuts each time. As the clock keeps ticking, and with the fiscal year almost half-way over, House, Senate, and White House negotiators have continued meeting but have failed to produce a viable compromise. Recent reports are citing a growing consensus around roughly $33 billion in cuts from the FY 2010 budget, or $73 billion below the president's request, with Democrats unwilling to cut any more than that.

However, it remains to be seen if House conservatives will accept such a compromise. Representatives such as Mike Pence (R-IN) are now calling for a government shutdown unless Senate Democrats capitulate to his party's demands, saying any compromise below the level of cuts in H.R. 1 would be betraying the Pledge to America. With the current CR ending on April 8 and some members of Congress vowing to vote against any more CRs, a government shutdown is a stark possibility.

The president met with congressional leaders today (April 5) to try to work out a deal. Even as the president convened the budget meeting, Boehner instructed his House colleagues to prepare for a government shutdown. The meeting concluded without a deal in place, but the situation remains fluid as of press time. Check OMB Watch's blog, *The Fine Print*, for late-breaking updates on the FY 2011 budget negotiations.

FY 2011 Budget Proposals (in billions)			
Proposal	**Total Amount**	**Difference from Obama FY 2011 Request**	**Difference from FY 2010 Enacted**
FY 2010 Enacted	$1,090	-$39	$0
Obama FY 2011 Request, Feb. 2010	$1,128	$0	+$39
Sessions-McCaskill, March 2010	$1,094	-$34	+$4
House Budget Enforcement Resolution, July 2010	$1,121	-$7	+$31
Senate Budget Resolution, April 2010	$1,122	-$6	+$32
House H.R. 1, Feb. 2011	$1,029	-$100	-$61
Senate Seven-Month CR, March 2011	$1,077	-$51	-$12

Improper Payments Provide Opportunity, Challenge to Administration

In fiscal year (FY) 2010, the federal government disbursed a little more than $125 billion in improper payments to the public, up from roughly $110 billion in FY 2009. Though total improper payment dollars have increased, the federal government is getting better at preventing these wasteful disbursements. Indeed, most federal agencies are only now finalizing implementation of the Obama administration's improper payments reduction effort, which began in late 2009.

Improper payments occur when the government sends a check to the wrong person, sends the wrong amount of money to the right person, or sends the right amount of money to the right person but that person ends up using the funds in an improper manner.

The administration took its first crack at addressing improper payments in November 2009 with an executive order (E.O.), attempting to increase transparency and provide agencies with better incentives and more accountability to help the government get a better handle on the scope of the problem. The initiative built on reforms started in 2002 that required federal agencies to account for the root causes of payment errors in programs susceptible to significant improper payments.

The E.O., along with guidance released in March 2010 directing federal agencies how to implement the new plan, called for "several new public disclosure requirements" that would increase the accountability of federal agencies for any lack of progress on reducing improper payments.

One result of the E.O. and guidance has been the Payment Accuracy website. Similar to other accountability-based, data-driven Obama administration websites, like the IT Dashboard and Recovery.gov, Payment Accuracy provides the public with a one-stop shop for information on the federal government's efforts to reduce improper payments.

One of the interesting aspects of the Payment Accuracy website is the inclusion of the names of two individuals at the program and agency levels chosen to be accountable for each of the 14 current high-error programs, meaning those that reported roughly $750 million or more in improper payments in 2009. This mirrors the Obama administration’s effort to increase accountability by publishing the identities of a program's senior accountable officials through its IT Dashboard. Some, however, have questioned whether these efforts are enough to increase accountability within Washington's notoriously impenetrable layers of bureaucracy.

Publishing the names of those accountable for high-risk programs is a requirement enacted under the Improper Payments Elimination and Recovery Act (IPERA), passed by Congress in July 2010. According to an official at the Government Accountability Office (GAO), "There are some attractive 'carrots' for agencies included in" IPERA:

> For example, agencies can use up to 25 percent of recovered funds for improving financial management; up to 25 percent for the program or fund linked to the overpayment; and up to 5 percent for inspector general activities. So, agencies can keep as much as 55 percent of the recaptured money, and the rest is returned to the general treasury.

With debates heating up in Congress over government spending, improper payments may play an outsized role in future budget negotiations. Indeed, GAO highlighted the federal government's proclivity to send checks to the wrong people in its recent and hugely popular report on duplicative programs.

Conservatives have picked up the improper payments issue, just like other similar potential savings in government, as a reason why Congress needs to reduce government spending. They tend to question why Congress should lavish the federal government with further funds when it already wastes over $100 billion. But this argument misses the point that many of these agencies need money to implement the administration's anti-fraud measures like fighting improper payments.

One of GAO's recommendations is for the administration to continue pushing its initiative, which shows that the watchdog understands the importance of breaking through the federal government's bureaucracy to enact real change.

That breakthrough will require Congress to fully grant the administration's funding requests for fraud-fighting measures, such as the Do Not Pay List. Created by a presidential memorandum in June 2010, the Do Not Pay List provides government employees with a consolidated database of people and organizations that are ineligible to receive government funds.

Though GAO warns, "[I]t is too soon to determine whether the ... [the administration's current initiative] will achieve [its] goals," there is vast potential for the government to continue reducing improper payments. Those efforts will only succeed if funds are available for implementation and if the level of determination from the White House holds steady.

Transparency at Risk in Budget Debate

Penny-pinching fever has engulfed Washington, with both parties eager to root out perceived wasteful spending. Several proposals look for savings in the government's information dissemination programs. While some of the proposals are carefully targeted reductions, others would slash funding indiscriminately with damaging consequences to some innovative transparency projects and programs.

Congress Proposes Cuts to E-Government

H.R. 1, the House-passed continuing resolution (CR) for the remainder of fiscal year (FY) 2011, slashes the budget for the Electronic Government Fund from $34 million to $2 million, a 94 percent reduction. The fund, which is managed by the General Services Administration (GSA), pays for transparency programs including USAspending.gov, the IT Dashboard, Data.gov, Challenge.gov, and Performance.gov, a site that is currently under construction.

The Senate rejected H.R. 1 as well as a Democratic-backed alternative that would have reduced the Electronic Government Fund by the same amount. Congress is scrambling to agree on a compromise before the previous CR expires on April 8 (see a related article in this week's *Watcher*).

The fund grew to its current level at the beginning of the Obama administration, in the FY 2010 budget, at the administration's request. The goals of the new initiatives seem to justify the increased funding. Indeed, a recent OMB Watch report identified e-government as a strength of the Obama administration's transparency accomplishments and noted several GSA projects in particular. President Obama's budget request for FY 2012 maintains the fund at its current $34 million level.

However, the cuts in H.R. 1 reduce funding to a level even lower than the pre-Obama years. Congress appropriated $3 million for the fund in FY 2008.

In July 2010, a Senate subcommittee approved $20 million for the fund for FY 2011, a substantial reduction that was still far less drastic than current proposals. However, the full Senate never voted on the bill. The equivalent House subcommittee did not report a bill.

The cuts in H.R. 1 are so steep that agencies are reportedly making contingency plans to shutter the sites if the CR is passed at the levels in the House bill. In a time of heightened concern about federal spending, it would be ironic for budget cuts to turn off the very websites that let Americans see how their tax dollars are spent.

As the deadline for budget action draws near, House Republicans have floated a different, shorter-term CR. H.R. 1363 proposes to provide $17 million for the Electronic Government Fund through the end of the fiscal year, which is roughly equivalent to the current level of funding. It remains to be seen if this CR will pass the House, if the allocation for the fund will remain at the proposed level, or if the Senate will take up a similar measure. Reports near press time indicated that the White House has rejected H.R. 1363.

Other Damage in H.R. 1

In addition, H.R. 1 sharply cuts the U.S. Environmental Protection Agency's (EPA) greenhouse gas reporting program, which will collect and make available data on the pollution that drives climate change.

H.R. 1 also includes a litany of unpopular policy riders, which attach conditions and policy changes to the bill. One of the riders prohibits funding for an online database of consumer product safety complaints developed by the Consumer Product Safety Commission.

Print Savings

While there are a host of cuts moving forward related to online information services, a variety of proposals have also been advanced to reduce spending on government printing. In January, the House unanimously passed H.R. 292, the Stop the OverPrinting Act. The bill would prohibit the Government Printing Office (GPO) from printing copies of bills and resolutions for members of Congress. A Senate version is pending.

Under current practice, GPO prints at least five copies of a proposed bill or resolution for each original sponsor, adding to an estimated 2.8 million copies in 2010, according to a press release by House Speaker John Boehner (R-OH). Hundreds of copies of each bill and resolution would continue to be printed and would be distributed through congressional document rooms. The bill would save a significant amount of the $7 million GPO is anticipated to spend on congressional printing in 2011, according to a press release by Sen. Tom Coburn (R-OK).

In February, the Administrative Committee of the Federal Register issued a notice amending the regulations for the *United States Government Manual*. Under the new rules, print copies of the manual will no longer be distributed free of charge to federal agencies, and it will no longer be mandatory to print copies of the manual in lieu of the electronic version. GPO may continue to print copies of the manual based on demand, and agencies requesting a print copy will have to pay for it. In FY 2010, nearly 9,000 copies of the manual were distributed to government agencies at a cost of nearly $89,000, according to records provided by the National Archives and Records Administration.

H.R. 235, S. 239, and S. 477 all contain language that would require the Office of Management and Budget (OMB) to develop a 10-year strategy to phase out unnecessary printing of government publications and take measures to reduce printing by government employees. H.R. 235 and S. 477 contain additional language to require each government publication to identify the number of copies printed and the cost of doing so.

Some legislative proposals target specific agencies or documents for printing reductions. H.R. 1246, by Rep. Allen West (R-FL), would reduce the Defense Department's printing budget by ten percent. S. 674 would end the printing of the *Congressional Record* except for a limited number of archival copies.

President Obama's FY 2012 budget proposes to reduce printing costs in several ways. The administration's government-wide efficiency initiative is targeting printing costs as an area for savings by eliminating some printing and making other printing more efficient. For instance, the 2010 SAVE Award-winning idea would end the print distribution of the *Federal Register* to federal employees, saving $4 million annually.

The administration's budget also includes several areas where agencies propose to reduce costs or improve services by shifting to electronic reporting or service delivery in lieu of paper. These include expanding electronic reporting at EPA and the Labor Department, implementing a new paperless claims processing system at the Department of Veterans Affairs, and increasing paperless transactions at the Treasury Department.

Other proposals are more rash. S. 162, by Sen. Rand Paul (R-KY), would eliminate the entire GPO budget, which was $94 million in FY 2010.

Seal Trumps Speech in False Claims Act Case

The U.S. Court of Appeals for the Fourth Circuit recently ruled against three public interest groups that sought to limit the government's ability to gag whistleblowers who file complaints under the False Claims Act (FCA). The ruling upheld a lower court decision to dismiss the suit.

The American Civil Liberties Union (ACLU) filed suit against the government on behalf of the Government Accountability Project (GAP) and OMB Watch. In *ACLU v. Holder*, the plaintiffs contended that the extended use of the FCA seal had violated the First Amendment as well as separation of powers. The plaintiffs sought to limit the government's ability to restrict the speech of whistleblowers related to their complaints.

The FCA is a tremendous tool that encourages whistleblowers to step forward with information on waste, fraud, and abuse in government programs. Under the FCA, whistleblowers may receive a percentage of the money saved by the government if their complaints are successful.

The law allows the government to seal cases for 60 days from the time complaints are filed to allow the Department of Justice to investigate and decide whether or not to proceed. However, in practice, these seals can last much longer, dragging out from months into years, during which time whistleblowers often feel they cannot discuss the problem or pursue other means of addressing the issue despite the uncertainty of government action.

The intended purpose of the seal is to protect whistleblowers from retaliation by providing them with anonymity until the complaint moves forward, and in many cases, that is still how the seal functions. But in some cases, whistleblowers are less concerned with anonymity and are eager to discuss the problems they have uncovered with members of Congress and the media. In those cases, the seal can act as a gag on a complainant.

The Fourth Circuit ruled 2-1 to dismiss the suit and maintain the government's authority to apply the FCA seal as it had been prior to the suit. The majority opinion found that the seal provision was narrowly tailored in three ways:

- First, that the seal is only supposed to last for 60 days
- Second, that a court gets to review the seal if the government chooses to extend it beyond the initial 60-day period
- Third, that the seal only limits whistleblowers from discussing the FCA complaint but not the underlying fraud

The third point, that "[n]othing in the FCA prevents the *qui tam* relator from disclosing the existence of the fraud" is close to the point that the plaintiffs sought to clarify with the lawsuit. However, the ruling also noted, "The FCA's seal provisions, however, only preclude a *qui tam* relator who wants to use the FCA to recover money from discussing the FCA complaint for a brief period of time." The concern is that whistleblowers using the FCA in hopes of recovering funds will find it difficult to discuss the underlying fraud without running the risk of discussing some aspect of the complaint. Rather than run the risk of invalidating their complaint, whistleblowers will discuss nothing about the underlying issues while the seal is in place.

The dissenting opinion by Judge Roger Gregory, however, found that transparency served an important purpose in holding the government accountable in its implementation of the FCA. Gregory wrote:

> The freedom to speak about FCA complaints bolsters the public role of relators and pressures the government to rigorously enforce the FCA—or to expeditiously decline to intervene. It also reduces the risk that the government will under-enforce the FCA for political reasons, such as against campaign donors. Indeed, there is reason to believe that speech about FCA under-enforcement remains important.

Gregory goes on to note that in reality, the government has interpreted the scope of the seal more broadly then limiting whistleblowers from discussing the specific complaint and agreed that the seal could limit the speech of those wishing to discuss the underlying issues. Gregory stated, "I am hard-pressed to see how any relator could still speak about fraud without violating the seal provisions or being chilled," and concluded that the government could threaten criminal charges against anyone who disclosed the basic facts of the fraud in an FCA complaint.

The plaintiffs have 45 days to decide if they will appeal the circuit court's ruling.

One Year Later, Massey Still Puts Miners at Risk

One year after an explosion killed 29 miners at the Upper Big Branch mine in West Virginia, the Mine Safety and Health Administration (MSHA) continues to cite the mine's owner, Massey Energy, for significant safety and health hazards at the company's other mines.

In February, MSHA reported that its inspectors had cited four Massey mines with 81 violations, 42 of which the agency considers "significant and substantial" – a designation reserved for especially dangerous violations. MSHA also found 85 violations at three other mines and one quarry not owned by Massey. MSHA chose the eight operations for "impact inspections" based on "their poor compliance history or particular compliance concerns."

The February impact inspections are the latest in MSHA's effort to more closely scrutinize high-risk mines in the wake of the April 5, 2010, explosion at the Upper Big Branch mine. The disaster once again thrust the issue of mine safety and MSHA, the federal agency responsible for protecting miners, into the spotlight.

After the blast, Massey Energy was also in the spotlight. The company had a long history of mine safety and health violations, but it often avoided additional scrutiny by contesting MSHA citations. Don Blankenship, then the CEO of Massey, was a controversial figure in the mining community. In July 2010, he said that, had Massey further resisted MSHA regulation, the explosion at Upper Big Branch may have been prevented.

Federal prosecutors have indicted Massey's head of security, Hughie Elbert Stover, for attempting to block the investigation into the disaster. Stover is accused of lying to the Federal Bureau of Investigation (FBI) and MSHA, as well as destruction of evidence. Additionally, several families of the miners and at least one miner who survived the accident have sued Massey.

MSHA's investigation into the Upper Big Branch disaster is ongoing. The agency plans to hold a public briefing on its investigation on June 29.

The disaster was the most deadly mining accident in the U.S. in 40 years. "As the anniversary of this tragedy so vividly reminds us, we in the mining community must continue to work tirelessly to ensure that miners go to work and return home safe and healthy to family and friends, every shift of every day," MSHA head Joe Main said in a statement. "That is the promise we make to miners and their families. That is the mandate of MSHA." To mark the one-year anniversary of the explosion, Massey Energy announced a one-day production stoppage and safety stand down at its underground coal production sites and a company-wide moment of silence on April 5.

Main says new legislation is necessary to protect miners. Speaking March 31 before the Senate Health, Education, Labor and Pensions Committee, Main called on Congress to provide MSHA with more flexibility to issue injunctions when it believes miners are in imminent danger, to make it easier for MSHA to seek criminal prosecution against the worst violators, and to strengthen whistleblower protections for miners.

During the hearing, MSHA's Pattern of Violations (POV) program was once again criticized. MSHA can add mines to its POV list, triggering additional monitoring and enforcement actions, but MSHA has never added a mine to the POV list in the program's 32-year history, according to the Department of Labor Office of the Inspector General. The Labor Department's Assistant Inspector General, Elliot Lewis, testified about the problems with the program and pointed out that "MSHA did not implement regulations for administering its POV authority until 1990." Main also said that new legislation should strengthen the POV program.

Committee Chair Sen. Tom Harkin (D-IA) and Ranking Member Mike Enzi (R-WY) both expressed interest in reforming the agency to better protect miners. In 2010, mine safety legislation was introduced in both chambers but never became law. Consistent with Main's recommendations, the bill would have raised penalties, reformed the POV program, and strengthened whistleblower protections, among other things.

However, passage of mine safety legislation is unlikely, as House Republicans have consistently balked at the idea of the government imposing new requirements on business. Legislation may also encounter resistance in the Senate. Sen. Rand Paul (R-KY), a member of the health panel and a founder of the Senate's Tea Party caucus, has expressed skepticism over mine safety regulation. During the hearing, Paul said, "There is a point or a balancing act between when a regulation becomes burdensome enough that our energy production is stifled." In 2010, then-candidate Paul responded to a question about the Upper Big Branch disaster by saying "accidents happen."

Regulating Political Advertisements: Looking Beyond the FEC

Over the past several election cycles, the statement that "I'm John Smith, and I approved this message" has become a ubiquitous part of the political lexicon. If the Media Access Project has its way, however, a whole new series of disclosures will become just as familiar to the American public.

On March 22, the Media Access Project (MAP) filed a Petition for Rulemaking with the Federal Communications Commission (FCC) that seeks to change the regulations for political advertisements – an area traditionally overseen by the Federal Election Commission (FEC). If adopted, the proposal would be an expansion of the FCC's power to regulate in the political arena, a clear effort to avoid the deadlocked FEC. The FCC regulates communications technologies and, in recent decades, the Internet.

Until 2008, the FEC had operated with a surprising degree of efficiency, considering the challenges inherent in its setup. No more than half of the commission's six members can be drawn from the same political party, and the agency may act only on a supermajority vote. Nevertheless, as a 2009 *Washington Post* editorial put it, "deadlocks have tended to arise sporadically, and in ideologically or politically charged cases, not in run-of-the-mill enforcement actions."

Before 2008, the FEC was able to reach a decision more than 98 percent of the time, according to an editorial in *Roll Call*. However, over the past two years, this collegiality has begun to break down: the agency deadlocked 16 percent of the time in 2009 and 11 percent of the time in 2010. A March 10 *New York Times* editorial lays out two of the most recent examples: on March 4, the FEC was unable to approve its professional staff's two recommendations for enforcement actions against state political parties (the Kansas Republican Party and the Georgia Democratic Party) that had clearly violated campaign finance laws.

The entrenchment seems to be about more than partisanship. According to a letter sent to President Obama by a number of campaign finance groups on March 15, half the current commissioners are "ideologically opposed to the campaign finance laws." One year after the *Citizens United v. FEC* decision, the FEC has failed to approve either of two proposed rules which would have started the process of putting the U.S. Supreme Court's decision into law. This paralysis is beginning to have real consequences: it now appears likely that the 2012 campaigns will be conducted without any guidance interpreting *Citizens United*.

FCC as an Alternative

The Media Access Project – which is led by a former FCC commissioner – has petitioned the FCC to impose new disclosure requirements on political advertisements. MAP proposes that broadcasters be required to:

- Disclose the identity of all donors contributing at least 25 percent of the funding for a political advertisement
- Maintain a list of all donors contributing at least 10 percent of the ad's funding
- Obtain sworn statements from political advertisers about their largest sources of funding

The FCC, which is comprised of three Democratic and two Republican commissioners, is expected to be receptive to the proposal. Two Democratic commissioners have already announced that they will support the measure, while the Republicans are expected to oppose it. The chairman, Julius Genachowski, who has declined to publicly comment on the petition, was a major bundler for Obama's 2008 campaign.

Not unexpectedly, groups who have opposed other proposals to increase campaign finance disclosures have raised concerns about MAP's petition. They also raise practical considerations about the petition: that it would create different rules for broadcast advertisements than other kinds (for example, direct mail or online advertisements) and that groups that receive non-targeted donations would be required to arbitrarily select which of their donors to identify in any particular ad.

There are, of course, very real concerns about encouraging the FCC to depart from its current practice of deferring to the FEC to regulate campaign advertisements. However, the petition makes one thing clear: advocates for better disclosure of political spending are seeking creative solutions to the gridlock that currently paralyzes the FEC.

OMB Watch • 1742 Connecticut Avenue, N.W. • Washington, D.C. 20009
202-234-8494 (phone) | 202-234-8584 (fax)