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In This Issue

Estate Tax Vote Slated for September -- Take Action Now!

The long run-up to legislative action in the Senate on the estate tax appears to be coming to a close. The day before the chamber recessed in July, Majority Leader Bill Frist (R-TN) filed a motion to proceed to consider H.R. 8, the House passed estate tax repeal bill. This bill will be one of the first items the Senate is expected to take up when it returns in September, and it is quite likely that this repeal bill will ultimately serve as a vehicle for a bad estate tax reform proposal by Sen. Jon Kyl (R-AZ).

If Frist were to bring H.R. 8 to the Senate floor, the Democrats could debate the bill to death. The only procedure by which the Senate can vote to place a time limit on consideration of the bill, and thereby overcome a filibuster is through a cloture vote. Under the cloture rule, the Senate may limit consideration of a pending matter to 30 additional hours, but only if there are 60 votes. Therefore, defeating cloture is a key step to block efforts to repeal the estate tax or prevent enactment of an irresponsible estate tax reform.

A vote on cloture is usually a party-line vote, because it is viewed as a vote on procedure rather than on substance. Therefore, the cloture vote will probably garner the support of all 55 Republican Senators -- even though some of them oppose repeal of the estate tax. Because this cloture vote will ultimately allow proceeding with debate on H.R. 8, in many ways it is equivalent

to a vote for repeal since it will be much more difficult to prevent the enactment of repeal or a bad reform option after the debate has begun. In fact, some conservative organizations have announced they are viewing this cloture vote as equivalent with an up or down vote on full repeal.

It is still unclear whether Frist is sincere in his intention to hold this vote or if he is continuing to use a threat of a vote to motivate Democrats to reach a compromise in on-going negotiations during the August recess. Throughout this year, Frist has repeatedly threatened to bring the estate tax issue on the floor because he and other Republicans were frustrated with the pace of negotiations between Kyl and a handful of Democrats lead by Sen. Max Baucus (D-MT).

Irresponsible Reform

Kyl has a plan to "reform" the estate tax by lowering the maximum estate tax rate to that of the capital gains tax rate, currently 15 percent. Republicans have a long-term agenda to repeal the capital gains tax. Kyl is less concerned about the amount of money exempted from the tax since the main advocates of repeal are generally so wealthy that even a large exemption will not lower their tax bills significantly. Those families and corporations will save tremendous amounts of money, however, by lowering the tax rate.

Current law permits the first $1.5 million of the estate to be inherited tax free. That amount is scheduled to rise to $3.5 million in 2009. (The amounts are doubled if married.) If Kyl proposes a $3.5 million exemption and a 15 percent tax rate, it would mean an 80 percent decrease in revenue, effectively killing the estate tax. This would have adverse impact on charitable giving, on revenue collected at the state level, and provide a major shift in fundamental values that have guided this country since its founding.

Some fear if Frist wins the vote on cloture, it will become clear very quickly there are not 60 votes to pass H.R. 8. But with limited time already permitted on H.R. 8, Frist could shift to a reform option such as Sen. Kyl's. Since these issues are quite complex, it is possible some Senators might vote for "reform," thinking it is the best option.

Action Needed to Preserve the Estate Tax As Vote Approaches

Regardless of Frist's intentions, it is expected forces on both sides of this issue will ramp up efforts to influence Senators by launching media and advertising campaigns and by mobilizing constituents to share their views with their Senators. United for a Fair Economy and the Coalition for America's Priorities will be working to place pro estate tax advertisements in target states leading up to the vote in September.

It will also be even more important for individual supporters of the estate tax to take action. The Americans for a Fair Estate Tax coalition, chaired by OMB Watch, and Fair Taxes for All, a coalition of which OMB Watch is part of, are ramping up efforts to defeat the cloture vote.

Below are ways for concerned citizens to take action to preserve the estate tax:

- Send a letter to your Senators urging them to vote NO on cloture and reject repeal or irresponsible reform options.
- Use the August congressional recess to meet with your Senators while they are at home in the state to express your support for the estate tax.
- Send a Letter to the Editor of your local newspaper using USAction's online submission tool.
- Use these talking points in your organization's media work, in letters and visits with Senate offices, with friends, family, and co-workers, and anyone else who needs the real facts and information about the estate tax debate.

Office of Management and Budget Continues to Manipulate Budget Projections

On July 13, the White House's Office of Management and Budget (OMB) released its annual mid-session budget review that predicted an improvement in the current Fiscal Year 2005 (FY 05) deficit by $94 billion from its February projections. OMB claims the deficit estimate revision proves the president's tax cuts are working. Most independent analysts, however, believe the projected drop in this year's deficit is a result of tax provisions causing a one-time surge in revenue, as well as OMB's continued omission of certain costs in its deficit calculations.

OMB now projects the FY 05 deficit will be $333 billion, down from the $427 billion estimated in February. Even with this decrease, this year's would still be the third largest deficit in U.S. history (after the deficits from FY 03 and FY 04). The primary reason for such huge deficits is a combination of overwhelmingly large, unpaid-for tax cuts that have lowered revenues for the government to their lowest levels (as a percentage of the economy) since the 1950s, coupled with significant increases in overall federal spending. Thus the administration's "good news" regarding the lower deficit should be seen as relative only in its relation to previously biased forecasts than to any measure of economic soundness. When a more long-term view is taken, the argument that these new projections are positive economic indicators seems dubious.

This is the second year in a row that OMB has drastically decreased deficit projections in their mid-session review, causing some analysts and political commentators to suggest the administration artificially inflated their initial estimates, in order to claim progress later on in the year. In fact, this was < a href=" http://www.cbpp.org/2-2-04bud2.htm" target="_blank">originally suspected when initial FY04 deficit estimates were released by OMB at the beginning of 2004.

In February 2004, OMB projected a $521 billion deficit for FY 04 while most other analysts, including the Congressional Budget Office, projected significantly smaller deficits. By the time OMB released its mid-session review in July, 2004, it had lowered its deficit projections to $445 billion. The administration claimed victory for reducing deficits. Yet compared to 2003, deficits were increasing, and at an alarming rate.

Still worse, the $445 billion July, 2004, projection was also criticized as being inflated. *Three days* after OMB released its $445 billion figure, the Treasury department released quarterly deficit data indicating a $418 billion deficit for the fiscal year. Three days after that, the Congressional Budget Office released a report estimating the deficit for FY04 to be $422 billion.

Both these figures were released in the same week that OMB released its mid-session review. When the actual FY 04 deficit was reported to be $420 billion in October, the administration speciously compared it to their overstated estimates from February and July, once again claiming deficits were shrinking and its economic policies were working. Throughout the year leading up to the president's re-election bid, while the public saw reports and headlines stating that deficits were shrinking, the actual deficit increased from $375 billion to $420 billion.

Goldman Sachs summed up the administration's approach to deficit forecasting in August of 2004 by saying, "The Office of Management and Budget has perfected the art of under-promising and outperforming in terms of its near-term budget deficit forecasts... This creates the impression that the deficit is narrowing when, in fact, it will be up sharply from the $375-billion imbalance of a year earlier. This process is likely to continue in October, when the fiscal 2004 deficit turns out to be lower than the current OMB forecast."

The administration's cyclical use of over-inflating deficit projections throughout the year is more than just bad economic and budgetary policy. It is a deception of the Congress, the media, and ultimately the public about the fiscal health of the federal government and the consequences of

the administration's economic policies. This extends beyond over-inflated deficit projections to a fundamental willingness by the administration to manipulate fiscal analysis for political benefit. Such practices undercut a basic principle of democracies, which depend on an informed citizenry to make decisions about which policies (and, in turn, which politicians) are best for the country. The administration's intentional misrepresentation of deficits and other fiscal projections, in order to push people toward a desired conclusion, is manipulation that is both frightening and unacceptable.

Chemical Security Legislation to Address Transport Issues Introduced

Sen. Joseph Biden, Jr. (D-DE) introduced a comprehensive chemical security bill addressing shipments of hazardous materials entitled >"The Hazardous Materials Vulnerability Reduction Act of 2005" (S. 1256) on July 16. The bill, which comes after a flurry of recent legislative activity at the local level on chemical shipment security, promotes greater cooperation between agencies, as well as more input from state and local officials in securing hazardous chemicals.

Congress has devoted a great deal of its time of late to chemical security, as threats posed by chemical storage and transportation have gain national attention. The Senate Homeland Security and Government Affairs Committee has held four separate hearing on the issue in recent months and appears committed to producing chemical security legislation this session. While much of the focus at these hearings and of previous legislation has been on facilities, Biden's bill addresses vulnerabilities related to hazardous chemical shipments passing through heavily populated areas on unprotected railroad tracks.

Biden's legislation proposes a number of provisions focused on identifying and addressing risks associated with shipping hazardous materials. It places an emphasis on improved communication and cooperation with state and local officials including first responders and community groups. Specifically the bill:

- Requires the Department of Homeland Security (DHS) to develop a comprehensive, risk-based strategy -- with input from state and local officials -- to deal with rail shipments of extremely hazardous materials;
- Allows local officials to petition the Department to become a "high threat corridor," around which particularly hazardous material would be rerouted;
- Requires DHS to issue annual reports regarding the transport of hazardous chemicals to Local Emergency Planning Committees established under the Community Right to Know Act of 1986;
- Requires the creation of coordinated first responder plans for chemical transport risks;
- Authorizes $100 million for training and equipment for first responders and rail workers likely to respond to an incident involving hazardous materials; and
- Requires critical studies into leased-track storage arrangements and technologies that can prevent or mitigate the consequences of an attack.

The bill was introduced without any cosponsors and immediately referred to the Senate Committee on Commerce, Science, and Transportation, chaired by Sen. Ted Stevens (R-AK). The committee has yet to schedule hearings on the issue of hazardous materials shipments.

Security experts overwhelmingly agree that chemical plants and shipments are particularly vulnerable to terrorist attacks. Bush administration, however, has been slow to react to such warnings, causing several local municipalities to move forward with their own measures to protect citizens from potential attacks. The District of Columbia passed legislation to ban shipments of hazardous materials from the District unless absolutely necessary, which the Bush administration and the rail industry have successfully blocked in court; the matter is currently being appealed.

Baltimore and Cleveland have introduced similar legislation pending in committees in both cities. Boston and Chicago are considering legislation banning hazardous shipments from coming into their city limits. For more on municipal policies see, this *Watcher* article.

Attorney General Considers Writing New FOIA Memo

Attorney General Alberto Gonzales recently announced he would reconsider the government's position on the Freedom of Information Act (FOIA), previously established in a controversial 2001 memo by then Attorney General John Ashcroft. The Ashcroft memo, which has been criticized by open government advocates, directed federal agency officials to presumptively withhold information requested under FOIA if they were uncertain whether the information should be released.

A Gonzales redefinition of the government position on FOIA would be precedent setting. Since the Carter administration several attorneys general have issued FOIA memoranda, but always after an administration change. No attorney general has ever retracted a FOIA memo during an administration. Several journalist associations, including the Associated Press, Associated Press Managing Editors Association, Cox Newspapers, the Newspaper Association of America, and The Reporters Committee for Freedom of the Press, have sent letters urging the new attorney general to reverse the current FOIA position. The groups claim that the Ashcroft memo's presumption of withholding has had a chilling effect on agencies and led to dramatically less information being released under FOIA.

According to a 2003 Government Accountability Office report, the Ashcroft memo led to increased information withholding among many federal agencies. Of 183 FOIA officers surveyed, 31 percent said they began withholding more information after the Ashcroft memo. Citizen and nonprofit organizations have complained that the reduction of available information limits government accountability and prevents groups form identifying and addressing important problems such as public health and safety threats.

Open government advocates also note flaws in FOIA implementation beyond the Ashcroft memo including long delays, exorbitant fees, and the lack of a request-tracking system. While it remains unclear if Gonzales will take action on FOIA implementation, Congress has already begun to weigh in on the issue with several bills aimed at improving the FOIA process:

- S. 1181 would require that legislation, which exempts government-held information from public access, specifically state the exemption; in addition, it sets the intent that documents should be available under FOIA, unless Congress explicitly creates an exception. It was passed on a voice vote in the Senate.
- S. 589 and H.R. 1620, the Faster FOIA bills, would establish a commission that would report on delays in responding to FOIA requests and recommend solutions. The Senate version, S. 589, passed favorably out of the Judiciary Committee on March 17.
- S. 394 and H.R.867, the OPEN Government Acts contain measures to strengthen FOIA including easier recovery of legal costs, expanded fee waivers, a tracking system for requests, and mediation for FOIA disputes, as well as extension of FOIA to information held by federal contractors.
- H.R. 2331, the Restore Open Government Act would revoke the Ashcroft memo and another memo written by White House Chief of Staff Andrew Card, as well as promote disclosure of information, curtail secret advisory committee meetings, and restore public access to presidential records.

Many individuals and organizations have urged Congress to improve FOIA and expressed their support for the current legislation. If you would like to contact your elected officials on this issue,

click here.

Cities Tackle Chemical Transportation Security

When a freight train accident took eight lives in South Carolina earlier this year because of unsafe and uninspected train cars carrying toxic materials, it heightened concerns about chemical security in our trains and trucks. Cities across the nation have begun addressing serious deficiencies on this homeland security issue because the federal government has done little. Boston, Cleveland, Chicago, and Baltimore are all considering legislation to mitigate the risks of shipping hazardous materials through their heavily populated centers.

In 2004, the District of Columbia became the first U.S. city to pass legislation banning hazardous shipments passing through its city limits destined for other locales. The DC Court of Appeals has since stayed the DC ordinance, following a challenge by the Bush administration and the rail industry that argued the legislation violated constitutional provisions dealing with interstate commerce. The Department of Justice asserted that rail security is the responsibility of the federal government and that local government has no authority in the matter. The DC government is appealing the court ruling.

Despite the court decision, several cities are moving forward with their own chemical security legislation. In Baltimore, City Councilman Kenneth Harris (D-District 4) sponsored legislation very similar to the DC ban. The bill has been referred to the Land Use and Transportation Committee, where Harris is vice-chair, and a Sept. 14 public hearing has been scheduled on the issue.

On May 9 in Cleveland, City Councilman Matthew Zone, introduced ordinance 928-05, which would prohibit rail shipments of hazardous materials through the city unless the fire chief issued a special permit. Several years ago Cleveland adopted restrictions on truck shipments of hazardous chemicals. The legislation is under administrative review by the city's Directors of Public Safety, Finance, Law as well as the Committees on Public Safety, Legislation, Finance.

Chicago Alderman Ed Smith (D-District 28) introduced legislation to reroute hazardous material shipments around the city. However, the measure was defeated in the Transportation and Health Committee due to opposition from rail corporations. After the recent London train bombings, the bill was re-introduced and is back in committee, with city officials optimistic about the legislation's chances for passage.

In Boston, City Councilmembers Stephen Murphy and Jerry McDermott recently cited federal inaction and the availability of alternative routes as key factors for submitting chemical transportation legislation. Their bill would prohibit hazardous material shipments within a 2.5 mile radius of Copley Square, a central urban location in Boston. The ordinance is now being considered by the city's Government Operations Committee, whose members include both Murphy and McDermott.

Almost four years since the terrorist attacks of 9/11, the federal government has taken no action to protect urban centers from threats posed by hazardous material shipments. This inaction continues despite terrorist attacks on European transit centers. Moreover, users of hazardous materials are not required by federal regulation to consider safer alternatives or to fully inform communities about hazardous cargo shipments. Sen. Joseph Biden (D-DE) has recently introduced national legislation that would require the Department of Homeland Security to work with cities and states to identify and address risks associated with chemical shipments. For more information on Biden's bill see our other Watcher article.

Local safety officials have repeatedly expressed safety concerns resulting from hazardous

materials passing through transit systems. These concerns garnered national attention this year when two freight trains carrying hazardous chemicals collided in Graniteville, South Carolina. The resulting spill, which killed nine and injured some 250 others, was the nation's worst from a train crash since 1978.

In the South Carolina incident, a manual track switch was left in the wrong position causing a moving train that was supposed to stay on a main line to collide with a parked train on a sideline. The 11,500 pounds of chlorine released by the collision created a gaseous cloud that hovered over the city through nightfall. Residents used towels and blankets to seal off doors and windows and prevent the greenish-yellow gas from entering their homes. Official clean-up efforts focused on the chlorine release, due to its potentially deadly effects on respiratory and nervous system function; however, the hazardous chemicals cresol and sodium hydroxide were also released during the accident.

Chemical accidents of this nature are more frequently than most realize. Two days after the South Carolina collision, a similar accident in Bieber, California, forced the evacuation of 5,400 local residents, injured two workers. In December 2004, a train carrying hazardous material derailed near St. Cloud, Minnesota, but luckily no hazardous materials were leaked. In a 2004 Rockland County, New York incident, a CSX freight train derailed, spilling nearly 200 tons of silicon metal. Yet, CSX won't release information about the chemicals that pass through jurisdictions to local HAZMAT teams, first responders, and State Emergency Response Committees.

Right to know advocates point out that, while these were accidents, key personnel were not informed about on-board chemicals and were thus stymied in their ability to respond. Community and environmental groups also maintain that the ability of terrorists to take advantage of track switches and other key areas of vulnerability in an attack necessitates added security and access to information on what is passing through communities.

First Public Case of Critical Infrastructure Information

A New Jersey resident, requesting access to a township's electronic map of land parcels, has brought to light the first public example of a law that hides information that meets standards for "critical infrastructure information" (CII). The local municipal utility denied the resident's request for land parcel information, because the data had been protected by the Department of Homeland Security (DHS) under the CII program.

The Brick Township Municipal Utilities Authority, which manages the city's water and sewer systems, took over the township's global information system (GIS) database of land parcels, which is used for property taxes, in the early 1990s. A 2003 request by a local resident for the data apparently prompted the utility to submit the information to DHS for CII protection.

Under a provision of the Homeland Security Act of 2002, companies may voluntarily submit information to DHS concerning the security or vulnerability of critical infrastructure. If accepted into the CII program, the information receives special protection and may no longer be released under federal or state open records laws. However, why the township land ownership information would qualify for the program is unclear.

Once the CII status was approved in a June 5 letter from DHS, the utility denied the request for information. Even though CII status protects the information from release it is unclear if the protection extends to requests made prior to its submittal to the program. It should also be noted that while the municipal utility refuses to grant the resident free access to the database, they publicly offer paper copies of the maps for $5 a piece, leading some to speculate that the utility

submitted the information to DHS specifically to avoid releasing the data *for free*.

Ruling on Material Support of Terrorist Organizations Mixed Blessing

A U.S. court ruled that key provisions of the USA PATRIOT Act targeting material support of terrorist organizations remain unconstitutionally vague despite recent revisions by Congress. The "material support" statutes, particularly troubling to nonprofit organizations, prohibited U.S. citizens or organizations from providing material support or resources to designated "foreign terrorist organizations," regardless of the nature or intent of the support. In the 42-page decision, U.S. District Court Judge Audrey Collins concluded that "the terms 'training' and 'expert advice or assistance' in the form of 'specialized knowledge' and 'service' are impermissibly vague under the Fifth Amendment."

In 2004, Judge Collins became the first judge to declare any part of the USA PATRIOT Act unconstitutional, ruling that the definitions of material support were insufficiently defined and could be construed to encompass First Amendment-protected activities. Yet the procedural history of the issue dates back to the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA), which provided the foundation for the USA PATRIOT Act's material support statutes. In its December revision of the AEDPA/USA PATRIOT Act, Congress attempted to address Collins' objections by passing the Intelligence Reform and Terrorism Prevention Act (IRTPA). Judge Collins found that Congress' revisions still fall short of solving the problem of vagueness: "Even as amended, the statute fails to identify the prohibited conduct in a manner that persons of ordinary intelligence can reasonably understand."

Plaintiffs in the case included five organizations and two U.S. citizens seeking to provide support to the lawful, nonviolent activities of the Partiya Karkeran Kurdistan (PKK) and the Liberation Tigers of Tamil Eelam (LTTE), both of which were designated "foreign terrorist organizations" in 1997. Each group undertakes political organizing and advocacy efforts and provisioning of social services and humanitarian aid, apart from their military engagement with government forces.

The PKK is a political organization representing Kurdish people in Turkey. While military activities are part of their campaign for Kurdish self-determination, they also provide vital social services and aid to Kurdish refugees and victims of human rights abuses. The plaintiffs sought to provide the PKK with "support," such as training in the use of humanitarian and international law for the peaceful resolution of disputes and instruction on petitioning for relief before representative bodies such as the United Nations.

The second organization, the LTTE, represents the interests of Tamils in Sri Lanka, who also face discriminatory treatment and human rights abuses, according to human rights organizations. In the wake of the tsunamis of December 2004, the plaintiffs sought to provide emergency relief and "expert training" to the LTTE, in such areas as effectively presenting claims for tsunami-related aid and negotiating peace agreements with the Sri Lankan government to facilitate the distribution of aid.

While the injunction against enforcement of the specified sections applies only to the two organizations named in the suit, it viewed by many advocates as a vital first step toward greater protection of the rights of individual philanthropists and U.S.-based organizations involved in international outreach efforts. "I'm pleased that the court has recognized that people have a right to support lawful, non-violent activities of groups the secretary of state has put on a blacklist," said David Cole, the Georgetown University Law professor who argued the case on behalf of the Humanitarian Law Project.

However, the ruling was a mixed victory. In addition to its limited application to the two named

organizations, the ruling concluded that the term "personnel" was sufficiently clarified in the IRTPA revision. The ruling also concluded that there were no due process violations in current procedure for terrorist financing prosecution, and that the government need not prove intent to perpetuate violence or illegal activities on the part of those suspected of supporting designated terrorist groups.

Study Finds Little Oversight of Religious Content or Client Choice in Gov't-Funded Programs

An Urban Institute study of the Bush administration's Faith Based Initiative, found that, while many faith-based organizations (FBOs) are integral service providers, they often lack established benchmarks and have little oversight at the state, local and federal levels, regarding religious content and the ability of clients to choose an alternative provider.

Examining more than 25 faith-based programs in Birmingham, Boston, and Denver, the study is the first in-depth look at the major grant programs in the Department of Health and Human Services with legislated "charitable choice" provisions, as well as discretionary programs funded under the Compassion Capital Fund. The Compassion Capital Fund was begun by President Bush and has received annual appropriations, but has never been authorized by Congress.

Many faith-based social service organizations contracted with government well before the "charitable choice" provisions and continue to do so. The study found that contracting with faith-based organizations under block grants has changed little since "charitable choice" began, ranging from zero to about 20 percent of total contracts in 2004.. Prayer, Bible study, or "Christ-centered" curricula are central to some programs of groups receiving federal funds, while other FBOs provide services in a manner similar to secular organizations. Findings suggest that these FBOs and secular nonprofits are more similar than is commonly understood. However, expressions of faith by service providers were considerably more prominent in programs supported by the Compassion Capital Fund initiatives than those funded under block grants.

The study found considerable uncertainty regarding implementation of the requirement to notify clients of their right to an alternative provider. FBO contractors in all three cities indicated that there are no formal mechanisms to address clients' right to an alternative provider. They also said they had not received legal guidance from government on responding to such a request. In theory, an intake coordinator identifies the problem requiring services and a contractor or other clinician determines the best provider, which could include an FBO. In practice, intake coordinators often refer clients to providers with whom they are familiar and normally do not refer to new providers, faith-based or otherwise.

However, officials have noted that even when clients are given the option of an alternative provider and informed that religious activities are voluntary, regardless of their personal preference, clients will likely accept a program based on their perception of viable options — mostly, the availability of treatment space. For example, in Alabama, nearly two-thirds of clients in substance abuse treatment are court-referred, so, as one official put it, clients may be unaware that the provider is part of a faith-based organization, but "people are looking for any safety out of the storm."

Although FBOs provide much needed services, capacity and accountability still remains problematic. While many state and local officials welcome participation from faith-based groups, many organizations lack the capacity to meet government contracting requirements. As government agencies are increasingly privatizing social services, monitoring and evaluating the performance of service providers becomes more important. FBOs, along with all contractors, are now attempting to install sufficient administrative and record-keeping mechanisms to monitor

performance, demands that often strain their organizational capacity. Even large, well-established, and experienced FBOs wrestle with the volume, complexity, and cost of new reporting requirements, while new and small providers are under greater pressure to comply with government accountability and performance standards.

The Compassion Capital Fund was established to provide money to intermediaries to build the capacity of small faith- and community-based groups, and better prepare them to receive public funds. The technical assistance is both needed and appreciated, as most FBOs have no previous experience in establishing reporting systems.

As a consequence, religious content and expressions are usually not included in the formal monitoring procedure. Agencies learn about such instances only by happenstance. The study found that prescribed monitoring of faith-based programs receiving federal funds is commonly restricted to financial audits, noting, "...attention to the faith content of programs was likely to be slight or serendipitous."

Additionally, while faith-based providers often try to achieve compliance through separation of and voluntary participation in any religious service component of their programs, the boundaries are permeable. For example, chapel attendance might be required but worship voluntary; a program could ask a client's permission to discuss faith, but then urge him or her to "seek God;" or a program might use faith as a way to motivate clients, but use public funds to pay only for other aspects of service provision. Sometimes there was no boundary, as when Bible study and religious teaching were integral parts of an intervention. In many cases, public agencies remain silent, as long as clients do not complain.

The Bush administration exalts the Faith-Based and Community Initiative as a "bold new approach to government's role in helping those in need," and a remedy to our troubled past when government "ignored or impeded the efforts of faith-based and community organizations." Nearly three-quarters (72 percent) of Americans cite the care and compassion of religious workers as an important reason for supporting government funding of faith-based groups. While Americans recognize the strong connection between religious practice and social service, unless government agencies monitor how faith-based programs use government funding, questions will remain. Of particular concern are how religious content affects the quality of services and how best to strengthen safeguards to protect those that services are intended to serve, such as persons with disabilities and children.

No Charges for Man Who Ejected Three from Town Hall Meeting

Federal prosecutors announced they will not charge the man who ejected three Denver residents from a taxpayer-funded town hall meeting on Social Security, because their car had an anti-war bumper sticker. The announcement was made after the Secret Service referred its investigation to the U.S. Attorney's office to consider charges of impersonating a federal officer. During the March incident, the unidentified man threatened to arrest the three attendees, if they did not leave, even though they had tickets and were not disrupting the event. An attorney of the three ejected from the event said they intend to file a civil suit for assault and violation of free speech rights.

On March 28, following their ejection, the "Denver Three," as they have become known in the press, met with Secret Service officials to find out why they had been forcibly removed by who they thought was an agent. During a subsequent meeting, it was revealed that the three were identified by a Republican staffer who saw a bumper sticker on their car that read, "No Blood for Oil." The Secret Service also said that the Republican Party was in charge of ticket distribution and staffing for the event, despite the White House communications office having set up the

event.

The White House has since identified the mystery man as a "White House volunteer." A spokesman for the U.S. Attorney's office said the man did not display a badge or claim to be a federal agent, although another volunteer had referred to him at the time of the incident as the "Secret Service." U.S. Attorney William Leone said, "Criminal law is not an appropriate tool to resolve this dispute. The normal give and take of the political system is the appropriate venue for a resolution."

The investigation was prompted by a request from several members of Congress from Colorado. Eight of the nine members of Colorado's Congressional delegation have issued statements saying the ejections were wrong. Rep. Marilyn Musgrave (R-CO), a long-time Bush ally, said, "I really do believe in free speech, and if you try to quell people it just makes them more determined."

Study Points to Improvements in Communication With Congress in Digital Age

A recent report by the Congressional Management Foundation (CMF), a nonprofit organization that provides management advice to members of Congress and their staff, described improvements both congressional staff and advocacy groups should implement to improve the quality of communications to and from Congress in the Internet age.

From interviews, focus groups and surveys, CMF found that congressional staff are frustrated by the increasing quantity and decreasing quality of constituent communications. This has led to increased mistrust on Capitol Hill of grassroots communications and the organizations that generate them. The study also found that congressional staff feel that they are doing more work to answer less substantive messages, leaving them less time for other legislative work. This is a trend identified in various studies over at least the last fifteen years, whose roots precede the explosion of email communication.

Congressional staff, according to the study, believe that the Internet and e-mail have provided some clear public benefits that are encouraging for democracy. Seventy-nine percent believe the Internet has made it easier for a citizen to get involved in the public policy process; 55 percent believe it has increased public understanding of what goes on in Washington; while 48 percent believe it has made elected officials more responsive to their constituents. The Internet and e-mail have also provided grassroots organizations and citizens with new and exciting opportunities to organize around issues, to access and share information, and to communicate with elected officials.

Study findings relevant to citizen activists and grassroots organizations include:

1. **Quality is more persuasive than quantity** -- thoughtful, personalized constituent messages generally have more influence than a large number of identical messages generated by a form. Grassroots campaigns should place greater emphasis on generating high-quality messages and less on form communications. This mirrors pre-Internet communications survey findings that showed that personalized letters were more effective than postcard or fax campaigns.
2. **The organization behind a grassroots campaign matters** -- grassroots organizations should identify the source of each campaign, according to congressional staff.
3. **Grassroots organizations should develop a better understanding of Congress** -- the quality and impact of constituent communications would increase, if organizations better understood the legislative process and adapted their efforts to the way congressional offices operate.
4. **There is a difference between getting noticed and having an impact** -- bad

grassroots practices may get noticed on Capitol Hill, but they tend not to be effective in influencing the opinions of members of Congress, and sometimes damage the relationship between congressional offices and grassroots organizations.

Key study findings for congressional offices include:

1. **The communications environment has changed and Congress will need to adapt to it** -- congressional offices are now deluged with email and have not developed a method to deal with the increased volume of correspondences.
2. **Congress must improve online communications** -- members of Congress should improve the timeliness of their responses, reach out to grassroots organizations to help identify better means for communicating, and answer e-mail with e-mail. On this last point, many offices still respond to email through U.S. mail.
3. **Managing the new communications environment requires new capabilities and new thinking** -- congressional offices may need additional staff and resources to manage the rapidly growing volume of constituent communications; they should expand the use of technology and adopt new management policies and/or establish a task force to identify solutions to communications challenges.
4. **The new communications environment is beneficial to the members of Congress** -- members should understand that new technology allows them to connect to thousands more constituents, better connect to politically active citizens, save money, and improve their image.

While elected officials communicate directly with constituents, so do a number of organizations. In fact, some organizations effectively serve as intermediaries, describing interactions between an elected official and his/her constituents. Although Congress is improving in this regard, most members do not have interactive websites that contain timely material. Advocacy organizations help fill that void by monitoring and reporting information to constituencies, and often providing an easy way for the constituent to contact his/her representative or senator. Consequently, how congressional staffers view and deal with mail is important to grassroots organizations.

The study raises important questions for advocacy organizations:

- Do "personalized or individual" messages that are "well-reasoned and articulate" truly carry more weight with an elected official or their staff? Some times raw numbers are just as important as reasoned arguments from constituents. After all, representatives and senators need large numbers for re-elected.
- Congressional staff indicated strong interest in methods of verifying the legitimacy of organizations that facilitate form letters. First, staff stated that they would want to contact the groups when thousands of emails are generated over one issue or piece of legislation. Second, they pointed out that it would be helpful when crafting a reply. One senate chief of staff explained, "I'm going to reply differently to a health care message sent by [a seniors group] then one sent by an insurance company." However, many advocacy organizations maintain that the origins of a letter should have little or no bearing on the outcome of that letter. If citizens are taking the time to send a letter on a particular issue or piece of legislation, regardless of the origin of its language, the citizen is concerned enough to get involved, they argue, and that concern should not be taken lightly. They wonder why the origin of a form letter's language should influence how a response letter is written.
- The study suggested that congressional offices may need more staff to cope with the increased volume of mail. However, given the prevailing belief among staff that answering mail is only a minor part of their job, it is unclear how additional staff would help the situation.

These issues may be addressed in three forthcoming CMF reports in this series. The next report will identify perceptions that citizens and the grassroots community have regarding their communications with Congress. The third in the series will recommend best practices to congressional offices for communicating with their constituents. The fourth and final phase of the project will facilitate discussion and problem-solving among congressional staff, citizens, and the grassroots community by convening a task force with representatives from the various sides of congressional communications.

High Court Nominee Admits Lobbying OMB, FDA

Supreme Court nominee John G. Roberts, Jr. conceded that he omitted records of lobbying the White House Office of Management and Budget (OMB) and U.S. Food and Drug Administration (FDA) from his other public disclosures, after *Newsday* uncovered the lobbying activities.

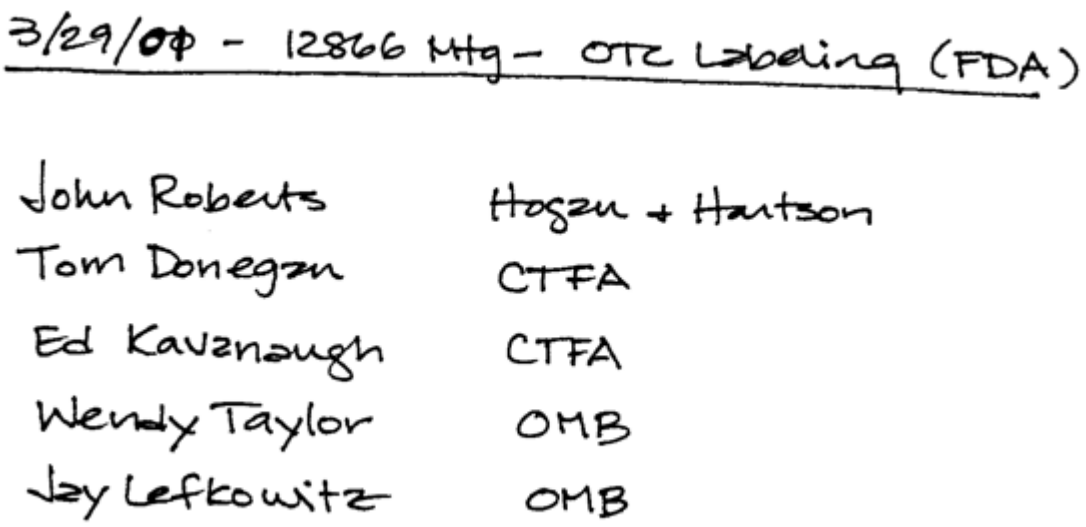
As an attorney for the Cosmetics, Toiletry and Fragrance Association, Roberts lobbied against proposed labeling regulations for sunscreen products by threatening litigation. After *Newsday* broke the story that these contacts were omitted from his previous disclosures to the Senate, Roberts argued that he had not included these contacts because he had considered the discussion of litigation as a legal task rather than a lobbying task.

Newsday notes that Roberts worked for CTFA longer than mentioned in either the previous disclosures or the follow-up letter Roberts submitted in response to the *Newsday* investigation:

The group's executive, Edward Kavanaugh, said he had hired Roberts for two tasks, to draft a lawsuit based on First Amendment and commercial free speech issues, and to work on the labeling of cosmetics like lipstick treated as over-the-counter drugs. But he did not return calls seeking clarification on when he hired Roberts.

An FDA record shows that on Jan. 4, 2000, Roberts and the cosmetic group's general counsel met with FDA officials to discuss a final rule for labeling over-the-counter drug products. The FDA calendar shows that in October 2001 Roberts and cosmetic association officials, including Kavanaugh, met with FDA lawyers about sunscreen labeling.

Hogan & Hartson did not register as a lobbyist for the cosmetics group until March 20, 2001. It filed that registration and a report on the first six months of 2001 in August 2001, and noted Roberts had met with [officials at the White House Office of Management and Budget (OMB)].



Roberts' meeting with OMB's Office of Information and Regulatory Affairs back in 2001 was recorded in a handwritten meeting log. OIRA now posts these meetings online. OMB Watch has an archive of meeting logs that OIRA did not post electronically.

Why Performance Standards May Be Superior to Cap-and-Trade

Cap-and-trade regimes are less effective at stimulating innovative pollution control methods than performance standards, according to a new scholarly article, challenging the industry-backed position that emissions trading and other market-based programs are inherently superior to so-called "command-and-control" regulation.

Industry generally rails against regulations that set performance standards for emissions reductions, and industry-funded think tanks and academics have successfully translated that opposition into widely held support for the use of emissions trading schemes, rather than strict performance standards, to control pollution. Arguments for the industry position are mistaken, argues Center for Progressive Reform member scholar David Driesen in a forthcoming article, as they are based on two fundamental flaws:

- **It selectively ignores an essential part of the emissions trading equation.** In a nutshell, the industry thesis holds that emissions trading schemes encourage companies to find ways to reduce their pollution below the allowed cap so they can sell emissions credits. Although true, the industry argument conveniently ignores the simple fact that there are both sellers and buyers in the emissions market. "While emissions trading encourages sellers to decrease emissions below the levels of a comparable traditional regulation," Driesen points out, "trading encourages buyers to *increase* their emissions..." (emphasis added). He concludes, "It is not clear why a measure that reduces innovation incentives for some facilities and increases them for others will lead to an increase in overall levels of innovation among facilities subject to a regulation."
- **It misattributes innovation incentives to the market-based mechanism, rather than to the stringency of the underlying emissions cap.** The industry-backed arguments treat emissions trading and performance standards as stark opposites even though cap-and-trade regimes are ultimately a form of performance standard. The cap in emissions trading schemes establishes an overall performance standard, while the market

for trading emissions credits essentially establishes a policy of indifference to the site-by-site geographical distribution of compliance levels. An across-the-board performance standard, alternatively, requires all facilities to comply equally. The stringency of the underlying performance goal creates the cost pressures that induce innovation in both emissions trading and performance standards models. "If the market performs perfectly," Driesen writes, "then an emissions trading program produces precisely the same amount of reductions that a traditional regulation with the same emissions limits would produce, no more and no less."

Driesen's comparison of performance standards and emissions trading starts with the supposition that traditional regulation can, just like the highly-touted market-based approach of emissions trading, inspire businesses to develop innovative compliance approaches that not only reduce compliance costs well below pre-regulation estimates but also can result in additional cost savings that offset the initial compliance costs. As famously argued by Harvard University's Michael Porter, all pollution is essentially waste and a sign of an inefficient system of production. Strict regulation can force industries to cut waste by discovering more effective ways to manage their resources, resulting in improved efficiencies of operation that save companies money. Porter asserts that companies do not take advantage of the potential cost savings of environmental innovations, because research into such savings is potentially costly and wrought with uncertainties. Strict regulation gives industries the incentive to invest in such innovations.

Emissions trading discourages this kind of innovation, Driesen argues. Emissions trading fails for several reasons:

- **It limits the scope of probable innovation by restricting the price range of rational innovation investments.** Though emissions trading provides incentives for some businesses to invest in innovation and cut emissions further, other facilities are encouraged to buy emissions credits rather than invest in new technologies. Under an emissions trading program, it may be less costly for a facility to buy emissions credits than to invest in costly innovation that may not pay off. Emissions trading would encourage only limited investments in innovation because, Driesen argues, "rational sellers will only generate credits that cost less to produce than 1) the control costs of prospective buyers, and 2) credits with which the seller must compete."
- **The much-touted lower costs of emissions trading will lower incentives for innovation.** By lowering the cost of compliance, emissions trading programs may actually discourage innovation. More stringent regulatory standards can actually induce innovation by providing industries with incentives to invest in innovation. As Driesen puts it, "stringent regulation (with or without trading) raises the cost of routine compliance and creates an incentive to innovate in order to escape the high costs." Thus, if emissions trading programs are less costly and burdensome for industry, industry will have less incentive to invest in new technologies that may provide greater benefits in the long term but can be expensive and risky in the short term. Driesen concludes, "Trading, by shifting reductions from high-cost to low-cost facilities, may lessen the net incentives for innovation."

Trading allows companies to comply with regulation without making significant changes that may provide greater benefits in the long-run. Driesen illustrates this point using the example of a greenhouse gas emissions trading program in the European Union. "If European states imposed strict requirements upon electric utilities, they might have to switch fuels in order to meet the requirements," Driesen explains. "They might need to switch from coal to natural gas to meet fairly stringent reduction targets and very strict standards might drive them toward innovative technologies, such as almost-zero polluting fuel cells and solar energy. But trading may allow them to avoid significant changes."

Thus, traditional emissions regulation -- either performance standards or technology-based standards -- may result in some cost pressures on industry in the short-term but can spur innovation that will provide greater cost savings for industry, as well as greater reductions in harmful pollutants, than cap-and-trade methods.

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