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In This Issue

Congress, President Running Out of Time to Achieve Fiscal Priorities

In our last issue, *The Watcher* detailed the status of several federal spending measures that have been delayed most of the fall. In this issue, we take a look at what these delays could mean to millions of American citizens.

Moves by Senate Republicans and the president to obstruct the passage of a spate of must-pass spending and revenue measures may result in benefit reductions or tax increases for millions of low- and moderate-income Americans if action is not taken quickly. President Bush has vetoed important and reasonable low-income assistance spending measures such as the Labor-HHS-Education appropriations bill and the SCHIP reauthorization bill, while Senate Republicans are in a deadlock with the Democratic leadership over Food Stamp and war spending. On the tax side, congressional Democrats also face Senate Republicans and a

president hostile to fiscally responsible pay-as-you-go principles who would prefer to see taxes increased for some 20 million middle-income families rather than for wealthy private equity managers.

Appropriations

Entering the third month of the new fiscal year, Congress and the president have only passed one of the twelve appropriations bills into law. If Congress fails to pass or fails to override Bush vetoes of the remaining FY 2008 appropriations bills, it will have to pass another continuing resolution (CR) to avoid a government shutdown before Dec. 14. Congress may extend the current CR until early 2008 and take up the spending fight then, or it may pass a CR that would fund the government for the rest of the 2008 fiscal year (through Sept. 30, 2008). A CR would most likely extend FY 2007 spending levels without including increases for population growth or inflation, putting pressure on state governments to find supplemental funding for assistance programs millions of Americans depend on.

The other option is for Congress to combine the remaining spending bills into one large bill, passing them all at once. This strategy, called an omnibus bill, may make it more difficult for the president to veto the bills should the funding levels not meet his demands. Although specific funding levels have not been mentioned during this stand-off, it is unlikely Bush would accept levels exceeding a compromise offered by Senate Majority Leader Harry Reid (D-NV) to split the difference. Because a significant number of conservative Republicans in the House are expected to back the president, overriding a veto of an omnibus is not in the offing.

The delays and cutbacks currently taking place have real consequences. As the Center on Budget and Policy Priorities notes, if this scenario plays out, the Women, Infants, and Children nutrition program (WIC) would be funded at about $5.5 billion. And, depending on which version of the Labor-HHS spending level is cut (House or Senate version), some 295,000 to 405,000 women, infants, and children would be dropped from the program. If Congress capitulates to Bush's demand that spending bills not exceed his "top line level" of $933 billion, over 500,000 WIC participants would be dropped from the program.

With only two weeks left to complete work, the worst-case scenario for appropriations would be enactment of a year-long CR. This would reduce funding for FY 2008 below even Bush's budget request and would result in substantial cuts in almost every budget area.

The Farm Bill

The current farm bill — a five-year agriculture subsidy and nutrition assistance spending bill — expired Sept. 30. If Congress fails to approve the pending $286 billion renewal, millions of Americans who rely on the Food Stamp program will face benefit cuts. Republicans are filibustering the Senate version over Reid's insistence that amendments be germane to the bill. It is possible a compromise will be reached soon that would allow Senate Republicans to offer a limited number of non-germane amendments, most likely to be related to tax policy. This would move the farm bill forward to likely passage later in

December.

It is crucial for the Senate to pass a reauthorization of the farm bill by the end of 2007. Because the current Food Stamp program eligibility requirements have not been adjusted for inflation since 1995, a simple extension of the current bill would cause millions of Food Stamp recipients to see their benefits reduced. The new farm bill would also provide an increase in the Emergency Food Assistance Program, which provides assistance to food banks. In light of a recent U.S. Department of Agriculture report, which found that 11 percent of U.S. households do not have access to enough food for an active, healthy life, erosion of this program would further threaten basic supports provided by food banks around the country. Without passage of a new farm bill, these and other programs providing nutrition assistance will likely cause millions of Americans to experience food insecurity or go hungry.

State Children's Health Insurance Program (SCHIP)

Aligning themselves with the president's opposition to expanding health care coverage for children, a group of conservative House Republicans have refused to override a veto of Congress's bipartisan, fiscally responsible extension of the State Children's Health Insurance Program. If these House members continue blocking the renewal bill and support Bush's meager proposal, one million fewer children and pregnant women would be enrolled in the program than if its current level of service was extended. If Congress simply extends current funding levels, 1.7 million pregnant women and children would not have access to this program. Although neither option is reasonable, inaction by Congress will result in the denial of health insurance coverage for over a million program participants.

During the week of Dec. 3, Congress sent the president a slightly modified version of the SCHIP reauthorization he vetoed earlier in 2007. The new version contains minor changes to address some concerns expressed during the first debate over the bill. The modifications tighten eligibility standards for undocumented immigrants, adults, and children living in families making more than 300 percent of the poverty level ($61,950 for a family of four). Bush is expected to veto this version as well.

War Funding

Of all the spending measures confronting Congress in December, this is perhaps the least pressing. Although the president claims that without passage of supplemental war funding, thousands of Pentagon employees and contractors will be furloughed, he vetoed a $50 billion supplemental spending bill because of its requirement that he set a timeline for withdrawal of troops. Bush's claims that layoffs will be needed, however, is pure political theater, as the Defense Department has multiple options for continuing to fund the war in the absence of a new emergency appropriation. In particular, the Defense Department could transfer money included in the recently passed Defense appropriations bill for FY 2008 until additional funds could be approved.

But even if layoffs were necessary, the president would bear ultimate responsibility. The vast majority of Americans — 67 percent according to a recent poll — disapprove of Bush's

handling of the Iraq War. That Congress would exercise its power of the purse to alter war policy is an attempt to align the interests of Americans with the nation's foreign policy. Congress, then, is presenting Bush with two options: Be accountable to the citizens he serves or layoff thousands of workers to fight a massively unpopular war. By his own admission, Bush would likely choose the latter.

AMT and Other Tax Provisions

Two "must-pass" tax items remain on the year's legislative agenda, and they are joined at the hip. Congress has failed thus far to extend the fix, or "patch," it has applied for several years running to the Alternative Minimum Tax (AMT). Without such a fix in place by Dec. 31, the number of taxpayers subject to the AMT will rise by 500 percent in 2008, from 4.2 million to roughly 23 million. Extending this hold-harmless provision for 2007 tax year returns is estimated to cost just over $50 billion over ten years. Congress has also failed to extend the package of popular individual and business tax credits, deductions, and other provisions known as "extenders," which includes the state and local sales tax deduction, the Work Opportunity Tax Credit, and the Welfare-to-Work Tax Credit and the research and development credit for businesses. Extending this set of provisions — which also expires at year's end — would cost $21 billion over ten years.

On Nov. 9, the House passed H.R. 3996, the Temporary Tax Relief Act of 2007, a bill (summary; vote; JCT score) combining the AMT patch and the extenders package. Since Congress' pay-as-you-go (PAYGO) rules require tax cuts to be offset, the bill contains revenue raising provisions, making it PAYGO compliant. The three chief offset provisions, each of which would raise just over $20 billion over ten years are: 1) taxing fund managers' carried interest payments as ordinary income; 2) eliminating the deferral of corporate deductions until executives' deferred compensation is actually received; and 3) delaying implementation of the provisions of the Job Creation Act of 2004.

Shortly before H.R. 3996 passed the House, President Bush issued a formal veto threat against the bill, saying that "these offsets ... would undermine the competitiveness of U.S. businesses in the global economy and could have adverse effects on the U.S. economy." There has been no action on the bill on the Senate side, and none is scheduled at present. Reid has insisted the principles of PAYGO be adhered to; GOP leaders have said they do not believe the AMT patch portion of the bill should require offsets. Although both the patch and the extenders are universally regarded as must-pass before Congress adjourns for the year, they currently remain in legislative limbo.

States Sue EPA for Reduced Reporting on Toxics

Twelve states are suing the U.S. Environmental Protection Agency (EPA) over the December 2006 regulation that weakened the Toxics Release Inventory (TRI). New York Attorney General Andrew Cuomo, leading the suit, filed in the U.S. District Court for the Southern District of New York on Nov. 28. Joining the suit are attorneys general from Arizona, California, Connecticut, Illinois, Maine, Massachusetts, Minnesota, New Jersey

and Vermont, and the Pennsylvania Department of Environmental Protection.

The EPA's Dec. 22, 2006, rule change, which went into effect Jan. 22, raised detailed reporting thresholds up to ten times above the old requirements. The suit claims that the increase was a violation of the Emergency Planning and Community Right-to-Know Act (EPCRA) because EPA does not have the authority to make changes that have such substantial impact. Moreover, EPA did not adequately justify the change and failed to follow its own rulemaking procedures.

The TRI program, which tracks the waste production and release of approximately 650 dangerous chemicals, has been one of EPA's most successful programs. Previously, facilities had to report detailed information (Form R) about the amount of the chemical and where the chemical went for any amount over 500 pounds. For pollution amounts less than 500 pounds, facilities only had to file a short form certification (Form A) that the chemical was under the limit. Now, for the majority of TRI chemicals, the threshold for reduced reporting is 5,000 pounds, so long as 2,000 pounds or less are released directly to the environment.

Though TRI does not mandate pollution reduction, the public disclosure of toxic pollution has acted as a powerful incentive for companies to reduce their generation of waste, eliminating over half of the annual toxic waste from the original chemical list since TRI's 1988 inception. In the last five years alone, TRI has shown an overall reduction of 2.8 billion pounds.

The lawsuit's nineteen claims concentrate on the following four areas:

1. *The change violates EPCRA because EPA did not apply the substantial majority standard on a chemical-by-chemical basis*: EPCRA allows EPA to change the reporting threshold only if the "majority of the total releases of the chemical at all facilities" is still reported (EPCRA section 313(f)(2)). That only a small percentage of total national releases would be lost with the rule change is irrelevant since the majority standard must be applied to each chemical individually. EPA's own analysis indicates that at least half of the detailed reporting for up to 46 chemicals in 2004 would have been missing if the new standard had applied.
2. *EPA's analysis in justifying the rule change was flawed*: EPA never explained how it selected the seemingly random new threshold levels, how it calculated the amounts for lost reporting and why there were large variations in its calculations. EPA's analysis also failed to consider all of the facilities required to report to TRI, thereby reducing the ability to project the impact on the substantial majority. The suit also questioned how EPA calculated the burden reduction impacts and why health and environmental factors were not considered.
3. *EPA's "burden reduction" justification is flawed and not in keeping with original legislative intent*: EPA never explained why burden reduction was "necessary" to carry out EPCRA, instead justifying the change with the assumption that it will motivate pollution reduction. Regardless, pollution reduction is not actually a stated purpose of TRI. Instead, the threshold change works *against* the purpose of the

program, which is to provide public information about chemical releases.

4. *EPA's response to comments was inadequate and failed to meet the standards for the rule change process*: Within the more than 122,000 comments that were submitted to EPA opposing this change, many raised a variety of these claims and complaints, which EPA failed to address.

Assistant EPA Administrator Molly O'Neill said in response to the lawsuit, "The TRI rule is making a good program better." Sean Moulton of OMB Watch disagreed, describing the change as "sweeping the thousands of tons of toxic waste under the carpet and calling it cleaning up the environment."

In EPA's effort to defend the change, the agency has stressed that for Persistent Bioaccumulative Toxins (PBTs), the most dangerous chemicals, facilities must certify that there are zero releases to the environment. Moulton counters, "This incorrectly assumes that just because these PBTs are captured and stored in a barrel they are safe." Hurricane Katrina and other disasters have demonstrated that chemicals that facilities do not plan to release to the environment can wind up in the air and water.

Stressing the PBT reporting requirements also allows EPA to avoid discussion of the new reporting threshold for the hundreds of other toxic chemicals under TRI, of which facilities are now allowed to release thousands of pounds without detailed reporting.

There has been enormous opposition to changing this popular program. The attorney general suit is the latest development of opposition on many fronts. California passed state legislation to create a requirement to report toxic pollution to the state agency using the old federal thresholds. At the federal level, companion bills have been introduced in the House and Senate to reverse the TRI changes and strip EPA of the ability to cutback the program in the future. During an Oct. 4 hearing of the House Energy and Commerce Subcommittee on Environment and Hazardous Materials, the Government Accountability Office testified that an ongoing investigation into the rule change has revealed that EPA cut corners and did not adequately review the impact of the changes, including the environment justice impact. A report on the GAO investigation is expected within a month.

This is the first legal challenge to the threshold change. District Judge Barbara S. Jones and Magistrate Judge Debra Freeman have been assigned to the case.

FedSpending 3.0 Goes Public

On Nov. 29, OMB Watch launched the third upgrade of its FedSpending.org website, which allows the public to search federal spending data, since the site was created a year ago. The new version includes approximately $16.8 trillion in spending data, including annual spending from FY 2000 through FY 2006 for both contracts and federal assistance, with partial contracts data for FY 2007. Major feature upgrades of this version include mapping,

expandable summary tables and a more powerful "SuperSearch."

During the site's first year, users performed approximately five million searches, clearly demonstrating the demand for greater transparency of federal spending. Many users offered suggestions for improvements or requests for changes and new features, which OMB Watch has tried to prioritize and consider. OMB Watch made two previous upgrades, each bringing FedSpending.org more current data and site improvements. Previous enhancements include improved data interface, increased search options, and improved accessibility for people with disabilities.

The new mapping feature, which can be accessed either through the map icon that appears in the upper right-hand corner of all search results or through level of detail options, allows users to view the geographic distribution of federal spending. Users can see a state-by-state breakdown of spending at the national level or drill down into an individual state to view the breakdown of congressional district spending. Below each map are tables with the mapped information listed on the left side and unmappable information listed on the right side. Unfortunately, FedSpending.org can only map domestic spending locations, so information on spending outside the U.S. or data with quality problems that make it impossible to assign the spending to a specific location are unmappable at this time.

Another significant improvement is the capability for FedSpending.org users to expand the tables within the "summary" view — such as the Top 5 Products and Services or Top 5 Funding Agencies. Now, for any search result, users can simply click on a link to expand these tables to list all of the results of these breakdowns. Previously, it would have been necessary for users to download or copy more detailed data from the site and calculate these results themselves. The expandable tables represent a real time saving for users.

The final new feature of FedSpending.org 3.0 is the introduction of a SuperSearch on both the contracts and assistance spending data. OMB Watch has consolidated and organized the search options previously separated into advanced search forms based on recipient, location and funding agency. The SuperSearch makes searching the spending data more versatile and powerful, as it offers the ability to combine a greater variety of search fields and more easily find the specific information users are looking for on the site.

The FedSpending.org 3.0 upgrade includes some of the biggest steps forward for the site since its creation and will make it easier for users to get better answers to their questions on federal spending. OMB Watch intends to continue to improve and expand the functions of FedSpending.org, with plans to link the spending information with other databases such census population estimates and campaign finance reports.

Secrecy Hinders Progress of Terrorism Cases

The secrecy of the government's counterterrorism efforts is impeding the progress of bringing suspected terrorists to trial. In reports from *The New York Times* and *The*

Washington Post, secret government programs and secret court procedures have slowed cases involving suspected and convicted terrorists.

A series of documents detailing secretly conducted arguments, in what may be the first Guantanamo case to go to trial, was released by the government the week of Nov. 26. *The New York Times* reports that documents reveal that the case of Omar Ahmed Khadr — captured when he was 15 in 2002 and held in Guantanamo as an enemy combatant for allegedly killing a U.S. army medic and planting mines in Afghanistan — has been hindered by debates regarding access to the identity of witnesses.

The military commission trying Khadr issued secret orders preventing his lawyers from learning the names of the witnesses against him. Access to the identity of those who are testifying against a defendant is a fundamental principle of the American legal system. Without such access, an adequate defense cannot be made, and the veracity of such witnesses' statements cannot be tested.

Another case suffering from excessive secrecy involves a Muslim leader convicted on terrorism charges in Fairfax, VA. The case is being hindered due to the government's attempts to implement secret proceedings. Ali al-Timimi is challenging his conviction, arguing that the evidence used against him may have been gathered using the secret National Security Agency's (NSA) Terrorist Surveillance Program (TSP).

The al-Timimi case has been bogged down by a series of secret filings regarding the program submitted by the intelligence community. The government intelligence community is not even allowing the government's prosecutors in the case to see the filings. *The Washington Post* reports that according to a transcript of the hearing, U.S. District Judge Leonie M. Brinkema said, "I am no longer willing to work under circumstances where both the prosecuting team and defense counsel are not getting any kind of access to these materials."

Judge Brinkema threatened to grant a motion for a new trial if the government intelligence community did not permit the prosecuting and defending counsel to review the secret filings.

In addition to secret filings and secret witnesses and evidence, the government has also used the state secrets privilege in an attempt to dismiss claims against the government on the grounds they involve information which, if revealed, would be dangerous to national security. The states secrets privilege is being invoked in the approximately 50 lawsuits against the government and telecommunications companies alleged to be involved in the NSA's TSP.

In a ruling by the Ninth Circuit Court of Appeals in *Al-Haramain Islamic Foundation v. Bush*, the court held that a document detailing that a particular organization was targeted by the TSP was a state secret but that the subject matter of the suit itself was not. Because the government has openly admitted the existence of the program, the government cannot

claim that TSP is now a state secret and that all lawsuits regarding the program should be dismissed. Sen. Arlen Specter☼ (R-PA) and others are considering curtailing the use of the states secrets privilege.

While many of the cases proceeding in the American justice system and in military commissions involve sensitive matters of national security, the truth-seeking operations of any justice system depend upon a level of openness and transparency. In order to defend against claims or proceed with claims against suspected terrorists, lawyers need access to basic information to make their case. Unfortunately, the present state of the justice system does not ensure this level of transparency.

Political Influence Leads to Revised Endangered Species Decisions

The U.S. Fish and Wildlife Service (FWS) will revise seven of eight decisions made under the Endangered Species Act program after reviewing them for improper political interference. The four-month review came as a result of a Department of Interior inspector general's investigation of allegations that former Deputy Assistant Secretary for Fish, Wildlife and Parks, Julie A. MacDonald, intimidated staff and changed the scientific information agency scientists developed for decisions about listing or delisting threatened or endangered species.

MacDonald resigned her position April 30 after the investigation concluded her actions, though not illegal, violated the Code of Federal Regulations regarding disclosure of nonpublic information and the appearance of preferential treatment. MacDonald disclosed information to the California Farm Bureau Federation and the Pacific Legal Foundation, a property rights group that often challenges endangered species decisions.

FWS Acting Director Kenneth Stansell sent a letter Nov. 23 to House Natural Resources Committee Chair Nick Rahall (D-WV) detailing the outcome of the eight decisions reviewed. Stansell wrote, "The Service believes that revising the seven identified decisions is supported by scientific evidence and the proper legal standards. As resources allow, these revisions will be completed as expeditiously as possible."

Rahall led the charge to investigate political interference in FWS. The Natural Resources Committee held a hearing May 9, shortly after the inspector general's investigation and MacDonald's resignation. On the committee's website, Rahall's reaction to the letter from Stansell implies the problem may go much deeper than these seven decisions. He is quoted as saying, "Julie MacDonald, who was a civil engineer by training, should never have been allowed near the endangered species program. This announcement is the latest illustration of the depth of incompetence at the highest levels of management within the Interior Department and breadth of this Administration's penchant for torpedoing science. Today we hear that seven out of eight decisions she made need to be scrapped, causing us once

again to question the integrity of the entire program under her watch."

Stansell's letter did not imply a sense of urgency to revise the decisions, however. In the case of the white-tailed prairie dog, for example, his letter indicates that "the Service will complete a 12-month finding in Fiscal Year 2009, if funding is available." The FWS is under court direction to complete a new proposed rule for the Canadian lynx critical habitat by August 2008 and must supply status reports to the court starting Feb. 1, 2008. Other species covered by the review include 12 species of Hawaiian picture-wing flies, the Arroyo toad, the California red-legged frog, and the Preble's meadow jumping mouse. The letter consistently promises to revise the decisions "as funding is made available."

According to a Nov. 28 *Washington Post* story, some environmentalists are suspicious of FWS's review and have sued the agency over the status of the white-tailed prairie dog. The Forest Guardians and the Center for Native Ecosystems joined with other groups to initiate the suit. A spokesperson for the Forest Guardians is quoted as saying the group believes there are other decisions that need to be reviewed because of MacDonald's action. In addition, they want FWS to review other decisions made by political appointees.

Scientific Wrangling over Air Quality Standard for Lead

The U.S. Environmental Protection Agency (EPA) is preparing to revise the national standard for airborne lead pollution, but differing scientific opinions among federal officials are further complicating a protracted rulemaking effort. The prevailing interpretation may have a significant impact on the agency's decision to tighten or weaken the standard.

EPA is developing its proposed revision for the National Ambient Air Quality Standard (NAAQS) for lead. Lead is one of six pollutants regulated by EPA's NAAQS program, which requires the agency to regularly evaluate and revise air quality standards and ensure federal regulations are fully protective of public health, regardless of their economic impact. The current standard for lead is 1.5 $\mu g/m^3$ (micrograms per cubic meter), a weight to volume measure of lead concentration in the air.

According to EPA, "The major sources of lead emissions have historically been motor vehicles (such as cars and trucks) and industrial sources." According to the American Lung Association, "Exposure to lead occurs mainly through the inhalation of air and the ingestion of lead in food, water, soil, or dust." Lead exposure can lead to a variety of adverse health effects including organ damage and neurological impairment. Its effects are most pronounced in children.

Environmental scientists on EPA's staff are recommending a markedly tighter air quality standard for lead. In its Nov. 1 final Staff Paper, EPA's Office of Air Quality Planning and Standards found, "The overall body of evidence on lead health effects: Clearly calls into question the adequacy of the current standard; and provides strong support for consideration of a lead standard that would provide greater health protection for sensitive

groups, especially for children." The staff paper recommends a range of levels from 0.2 μg/m^3 to as low as 0.02 μg/m^3.

Administrator Stephen Johnson will use the staff recommendations — along with the input of EPA advisory committees, public comment, and his own examination of the scientific evidence — when deciding on the standard.

However, statistics from the Centers for Disease Control and Prevention (CDC) — a federal body housed within the Department of Health and Human Services — are confounding the EPA staff recommendations. CDC establishes a "level of concern" for lead and other toxins. The current level of concern for lead is 10 μg/dL (micrograms per deciliter), a measure of lead concentration in the human bloodstream. Although CDC recognizes "recent studies suggest that adverse health effects exist in children at blood lead levels less than 10 μg/dL," the agency has not lowered the level of concern because it believes adequate evidence does not exist to properly identify a lower level.

If EPA abides by CDC's endorsement of a 10 μg/dL level of concern, there would be no need to tighten the air pollution standard to achieve that health outcome, experts say. However, if EPA were to endorse a lower blood lead level as protective of public health, it would be obligated to tighten the air quality standard in order to effect the lower concentration.

Policy analysts inside EPA's Office of Policy, Economics & Innovation (OPEI) are using CDC's numbers to chart a course in which the agency could weaken the standard. According to *Inside EPA* (subscription), OPEI is pushing EPA to endorse the CDC's blood lead level of concern of 10 μg/dL. If officials within OPEI are successful, EPA will likely propose a revision to the standard that is weaker than the current one.

A recent scientific study gives further credence to the EPA staff argument that the current standard is not sufficiently protective of public health. A study published in the journal *Environmental Health Perspectives* found children with blood lead levels between 5 μg/dL and 9.9 μg/dL scored lower on IQ tests than children with blood lead levels less than 5 μg/dL.

The study examined children between the ages of six months and six years. The authors concluded, "Children's intellectual functioning at 6 years of age is impaired by blood lead concentrations well below 10 μg/dL, the CDC definition of an elevated blood lead level."

Under the Clean Air Act, EPA must revise all NAAQS every five years. EPA set the current standard in 1978. EPA has not reviewed the national standard for lead since 1990. During the 1990 review, EPA decided a revision of the standard was unnecessary.

EPA began its current review of the NAAQS for lead after a federal court mandated the agency undertake the rulemaking. In September 2005, as a result of a lawsuit brought by the Missouri Coalition for the Environment, the U.S. District Court for the Eastern District of Missouri ordered EPA to begin a review of the lead standard and set out a timetable for

the review.

EPA was expected to publish an Advanced Notice of Proposed Rulemaking (ANPRM) by the end of November but has yet to do so. EPA submitted the ANPRM to the White House Office of Information and Regulatory Affairs (OIRA) on Nov. 16. OIRA reviews and edits agency regulatory actions before the actions are released to the public. OIRA has not completed its review of the ANPRM, according to its database on review.

EPA has indicated it will propose a new standard for lead in March 2008 and make its final decision by September of that year.

Snowmobile Plan for Yellowstone Ignores Environmental Impacts

For at least a decade, the limit on snowmobiles in Yellowstone National Park has been the subject of a pitched battle between conservationists and snowmobile advocates. The National Park Service (NPS) has announced a limit on snowmobile use in Yellowstone. As expected, NPS will allow 540 snowmobiles per day, an amount close to double the daily average from the previous winter.

On Nov. 20, The director of the Intermountain Region of the National Park Service announced the policy in a Record of Decision. The new policy will take effect beginning in December 2008, just as President Bush is leaving office.

Shortly before leaving office in January 2001, the Clinton administration banned all snowmobile use in Yellowstone. The Bush administration was able to delay implementation until a federal court invalidated the ban in 2004 in a case brought by the snowmobile industry.

For the past few winters, NPS had a temporary cap of 720 snowmobiles in place but has been promising to finalize a limit. NPS has delayed a decision while preparing a final environmental impact statement (FEIS), as required by the National Environmental Policy Act. (Click here for a summary.)

NPS published the FEIS on Sept. 25. NPS's decision adopts one of seven policy alternatives examined in the FEIS. Other options include capping snowmobile use at 1,024 per day, banning snowmobile use in favor of larger but less numerous snowcoaches, and banning all "oversnow vehicles" such as snowmobiles and snowcoaches. NPS calls the ban on all oversnow vehicles the "environmentally preferred alternative."

The most notable difference between the chosen alternative of 540 snowmobiles per day and the more environmentally friendly alternatives (the ban on snowmobiles and the ban on all oversnow vehicles) is the effect on air quality. A ban on all oversnow vehicles would result in no emissions, and a ban on snowmobiles would lead to "negligible" emissions from

snowcoaches. NPS classifies the adverse impacts related to the 540 snowmobile limit as "moderate."

In March, NPS released a draft version of the environmental impact statement for public comment. Commenters overwhelmingly supported the alternative to ban snowmobiles but allow snowcoaches.

Conservation groups support an outright ban on snowmobile use in Yellowstone. Advocates believe snowmobiles cause air pollution and excess noise that jeopardize the health of the Yellowstone environment.

The snowmobile industry has led the charge against a ban on snowmobile use in Yellowstone. The International Snowmobile Manufacturers Association said in a statement, "Continued snowmobile use in portions of Yellowstone and Grand Teton road systems have no adverse impacts on Park Resources, including: Air Quality, Wildlife, or Soundscapes."

Conservation groups expressed disappointment with NPS's new policy. The Wilderness Society derided NPS's decision, saying it would "swing the gates of Yellowstone National Park open — beyond this winter season — to more, not fewer snowmobiles, despite the Agency's own scientific conclusions that an increase in snowmobile use above the levels of the past three winters will lead to more noise, dirtier air and frequent disturbance of wildlife."

In October, a bipartisan group of 86 House members (none from the Yellowstone region) wrote to NPS asking for a ban on snowmobile use in favor of snowcoaches. The representatives wrote, "The agency's studies have repeatedly demonstrated that the best way to protect the health and safety of Yellowstone's visitors, staff, wildlife, and national resources while promoting more affordable and educational access, is to phase out snowmobile use entirely."

In March, seven former National Park Service directors wrote to Interior Secretary Dirk Kempthorne opposing expanded snowmobile use in Yellowstone.

Based on figures from previous winters, the new limit may not have a practical effect on snowmobile activity in the park. According to NPS, average daily snowmobile use last winter was about 290.

Multinationals Push for New Greenhouse Gas Emissions Regulations

Two calls-to-action on cutting greenhouse gas emissions were released Nov. 30, shortly before world leaders met in Bali to begin outlining a global agreement to succeed the Kyoto Protocol. First, business leaders from 150 global firms issued a communiqué calling for "a comprehensive, legally binding United Nations framework to tackle climate change."

Second, a report sponsored by a coalition of U.S businesses and nongovernmental organizations said the U.S. could reduce its output of greenhouse gas emissions substantially using existing technologies and low-cost emerging alternatives, but to do so "will require strong, coordinated, economy-wide action that begins in the near future."

The Bali Communiqué was issued by The Prince of Wales's UK and EU Corporate Leaders Groups on Climate Change. It calls for:

- "a comprehensive, legally binding United Nations framework to tackle climate change"
- "emission reduction targets to be guided primarily by science"
- "those countries that have already industrialised to make the greatest effort"
- "world leaders to seize the window of opportunity and agree [to] a work plan of negotiations to ensure an agreement can come into force post 2012 (when the existing Kyoto Protocol expires)"

This group of corporate leaders includes such giants as General Electric, Shell Oil, British Airways and DuPont. They note that the scientific evidence regarding climate change is "now overwhelming" and that a mandatory framework for reducing greenhouse gas (GHG) emissions "will provide business with the certainty it needs to scale up global investment in low-carbon technologies," according to a *Washington Post* story.

BBC News reports that the business leaders have moved away from the Bush administration's position and expect this administration to oppose a mandatory framework. James Connaughton, the chair of the U.S. Council on Environmental Quality "confirmed to the BBC's Environment Analyst that the White House will not agree to binding international emissions cuts during the UN's climate negotiations."

In the U.S., GHG emissions are projected to rise 35 percent between 2005 and 2030, according to a new report, *Reducing Greenhouse Gas Emissions: How Much at What Cost?* The report was sponsored by Environmental Defense, the Natural Resources Defense Council (NRDC), Pacific Gas & Electric, Shell, Honeywell and others and was conducted by McKinsey & Company, a consulting firm, which analyzed more than 250 opportunities to reduce or prevent GHGs.

Without any specific policy changes or reduced demand from consumers, the authors concluded that "[r]elying on tested approaches and high-potential emerging technologies, the U.S. could reduce annual GHG emissions by as much as 3.0 gigatons in the mid-range case to 4.5 gigatons in the high-range case by 2030" or in the range of 7-28 percent at a marginal cost of less than $50 per ton. Most of this reduction could be achieved by common sense practices focusing on energy efficiency both in households and businesses.

In NRDC's press release announcing the report, its president, Frances Beineke, said, "Global warming is becoming a core driver for business and the American economy. Smart companies know that action is coming, and they are moving to get ahead of the game ...

Strategies to cut emissions and reduce energy demand create both a challenge and an opportunity. With the right measures now, we can unlock tremendous savings throughout the economy."

The press release noted several factors make 2007 a turning point in attitudes toward global warming. For example, the U.S. Climate Action Partnership, a coalition of major businesses, issued a call for a federal limit on GHGs in conjunction with a market trading system. In April, the U.S. Supreme Court ruled that the U.S. Environmental Protection Agency (EPA) must start addressing climate change. Many states and Congress are progressing with programs and/or legislation to reduce GHG emissions.

The common themes among the business groups calling for action on GHG reductions include the need for mandatory frameworks that provide certainty for investors and businesses, the removal of disincentives that affect energy efficiency (such as shifting the cost of electricity to owners of apartment buildings from tenants so there would be incentives to buy energy efficient appliances), and federal support for research and development. Clearly, there is an important role for governments to achieve what the public, the business community and these reports support: domestic and international actions to reduce GHG emissions while there is still an opportunity to prevent the worst damage from a changing climate.

These actions suggest that business is not monolithic when it comes to regulatory matters. Many view environmental, consumer and health problems with equal concern as the public — and recognize that addressing the problems is good for business. This is where federal leadership is needed. The federal government needs to plot a steady long-range regulatory course for dealing with GHG emissions and other societal problems. Such leadership is sorely needed today.

FEC Approves Rule Exempting Issue Advocacy from Broadcast Ban

The Federal Election Commission (FEC) approved a final rule exempting some issue-related broadcasts from the electioneering communications rule. The old rule barred corporations — including nonprofits — and unions from paying for such ads within 60 days of a federal general election or 30 days of a primary, if the ads referred to a federal candidate. The new rule is the FEC's response to the U.S. Supreme Court's decision in the *FEC v. Wisconsin Right to Life* case, which struck down the ban as applied to grassroots lobbying. The new rule does not provide a specific standard. Instead, there is a safe harbor for some grassroots lobbying broadcasts, and the rest of the rule lists criteria for the FEC to decide if a communication is allowable on a case-by-case basis. It also requires donor disclosure for these non-electoral messages.

The new rule, which will be Section 114.15 of the Code of Federal Regulations, starts with the general statement that corporations and labor organizations may broadcast

electioneering communications if they are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified federal candidate." The rule sets up the FEC to do the interpretation on a case-by-case basis by listing "Rules of Interpretation" for all communications that do not fall within a limited safe harbor.

The safe harbor allows broadcasts to refer to federal candidates within the 30/60-day blackout period if:

- There is no mention of "any election, candidacy, political party, opposing candidate, or voting by the general public";
- It takes no position on a federal candidate's character or fitness for office; and
- It "focuses on a legislative, executive, or judicial matter" and asks the candidate to take a certain position or includes a call to action to the public to contact the candidate about the issue.

The safe harbor also allows commercial advertising that does not address the election. The safe harbor does not include a requirement that the candidate be an officeholder in a position to make a decision relating to the action.

The safe harbor's requirement of a call to action on an issue excludes broadcasts that may be simple announcements of events, cable access shows and other communications. The FEC will determine if these are permissible by considering "whether the communication includes any indicia of express advocacy and whether the communication has an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate." Indicia of express advocacy are communications that mention elections, political parties, voting, opposing candidates, candidacy or take a position relating to a candidate's character or fitness for office.

If the content of the broadcast focuses on a public policy issue and has a call to action or proposes a commercial transaction, it may be considered as something other than an appeal to vote for or against a candidate (e.g., grassroots lobbying). The rule says the FEC will only consider the content of the communication and "basic background information," and "any doubt will be resolved in favor of permitting the communication." The rule says the FEC website will list examples "derived from prior Commission or judicial actions." This overall approach could eventually develop the same kinds of problems charities and religious organizations are experiencing with the vagueness of the Internal Revenue Service's (IRS) "facts and circumstances" standard for enforcing the tax code's ban on partisan intervention in elections.

Donor Disclosure

The FEC left existing disclosure requirements in place for exempted broadcasts, so that any nonprofit that pays for a grassroots lobbying ad running in the 30/60 day period will have to file a report with the name and address of each donor giving $1,000 or more during the calendar year, if a donation "was made for the purpose of furthering electioneering

communications." This will create practical difficulties for nonprofits, since it is not always possible to anticipate when or if a grassroots lobbying ad will be necessary. It also appears to be inconsistent with Congress' decision earlier this year to reject proposals for grassroots lobbying disclosure under the Lobbying Disclosure Act.

The week before its Nov. 20 meeting, the FEC published the General Counsel's draft final rule, which was significantly different than the rule proposed for public comment, dropping the safe harbor approach and only providing general guidance. Just prior to the meeting, Chairman Robert Lenhard proposed an alternative that included a safe harbor. The proposal was adopted after an amendment offered by Commissioner Ellen Weintraub, making clear that the FEC will consider the ad's content and whether the ad contains "indicia of express advocacy."

Study Commission or Thought Police?

A bill that would create a commission and research center on "violent radicalization" and "extremist belief systems" that can lead to homegrown terrorism has been quietly making its way through Congress, passing the House on Oct. 23. The American Civil Liberties Union (ACLU) and other groups are raising concerns that its vague definitions, broad mandate and minimal oversight could lead to ethnic profiling and censorship based on personal beliefs. The bill now moves to the Senate, although the Homeland Security and Governmental Affairs Committee has not yet scheduled a hearing.

The Violent Radicalization and Homegrown Terrorism Act was passed in the House as H.R. 1955 (and has been introduced in the Senate as S. 1959). It provides for:

- Creation of a ten-member national commission charged with examining the "facts and causes of violent radicalization, homegrown terrorism, and ideologically based violence in the United States" and reporting its findings and legislative recommendations to Congress within 18 months of its creation. The commission would have the power to conduct hearings and receive evidence, but the act does not authorize it to subpoena persons or records.
- Establishment of a Center of Excellence for the Study of Violent Radicalization and Homegrown Terrorism in the United States, at a university designated by the Secretary of Homeland Security "following the merit-review processes" used for similar programs in the past. The Center's purpose is to "study the social, criminal, political, psychological, and economic roots of violent radicalism" and methods for addressing them that can be used by federal, state, local and tribal homeland security officials.
- A survey of approaches used by other nations to address the problem, to be conducted jointly by the Department of Homeland Security, Department of State, the Attorney General and "other Federal Government entities, as appropriate." The results are to be reported to Congress and used in developing a national policy on violent radicalization, "to the extent that methodologies are permissible under the

Constitution."

The bill was first introduced in the House on April 19 by Rep. Jane Harman☼ (D-CA), Chair of the Homeland Security Committee's Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, and Rep. Dave Reichert (R-WA), the ranking member, after the committee held two hearings on the issue. The bill passed the subcommittee on July 17, and on Aug. 1, the full Homeland Security Committee passed it by voice vote. The bill was also considered by the House Judiciary Committee, which discharged it on Oct. 16. It then passed the House 404-6.

The two hearings were primarily one-sided, with the bulk of the witnesses representing law enforcement or federal agencies. There was only one nonprofit witness, representing the Muslim Public Affairs Council. This perpetuates an unfortunate, continuing pattern of insufficient information gathering by congressional committees that are considering terrorism related issues.

For example, in May, the Senate Homeland Security and Governmental Affairs Committee held a hearing on "Violent Islamist Extremism" where Treasury officials erroneously characterized the position of nonprofit organizations, but no charities were invited to testify, prompting a letter of protest from Grantmakers Without Borders. Congress also missed an oversight opportunity in October when it passed expansion of penalties for violating the ban on material support for terrorism, but only heard from government witnesses in the one hearing it had.

The primary objections to the House bill relate to its broad definitions of violent radicalization, homegrown terrorism and ideologically based violence. Sec. 899A defines:

- "[V]iolent radicalization" as promoting an "extremist belief system" aimed at facilitating violence "to advance political, religious, or social change"
- Ideological violence as "use, or planned use, or threatened use of force or violence" to promote beliefs
- Homegrown terrorism as use or planned use of force to "intimdate or coerce the United States government, the civilian population or any segment thereof in furtherance of political or social objectives"

This broad definition could be interpreted to include rallies, sit-ins, protest marches and other traditional forms of dissent.

The Equal Justice Alliance says the bill creates "thought police" and has called on its members to contact their senators to oppose it. Executive Director Odette Williams said the commission "would give the appearance that whoever they are investigating is potentially a traitor or disloyal or a terrorist, even if all they were doing was advocating lawful views."

The ACLU raised further objections in a Nov. 28 press release, which said, "Law enforcement should focus on action, not thought." It said the ACLU appreciates steps taken

to improve the bill but remains concerned about its overall impact. Caroline Frederickson, director of the ACLU's Washington office, said, "The focus on the Internet is problematic" and could lead to censorship. The bill's Findings in Sec. 899B point out that the "Internet has aided in facilitating violent radicalization, ideologically based violence, and the homegrown terrorism process in the United States by providing access to broad and constant streams of terrorist-related propaganda to United States citizens."

Harman responded immediately in a letter to the ACLU, which said, "HR 1955 is not about interfering with speech or belief .... Radical speech, as I have said repeatedly, is protected under our Constitution." She said the ACLU's position is "confusing," since the group suggests revisions but also notes it is unlikely to support the bill even if the legislation is revised.

Sec. 899F of the bill requires that Homeland Security "not violate the constitutional rights, civil rights, or civil liberties of United States citizens or lawful permanent residents." It also would require operations to be conducted with racial neutrality and to be audited by Homeland Security's Civil Rights and Civil Liberties Officer. The ACLU's Mike German told *In These Times* that this provision does not amount to independent oversight, and, "Nobody should be fooled that such an office would have authority to address policies that are approved at a high level of the administration."

The commission itself is likely to be dominated by a coalition of congressional Republicans and administration officials if the bill passes and is implemented during the remainder of the Bush administration, though the majority could change when a new presidential administration takes power in January 2009. The president, Secretary of Homeland Security, minority leaders in the House and Senate and the ranking members of each chamber's homeland security committee would each appoint a member, which would currently provide a majority of six Republicans. Given the current administration's less than desirable record on protecting constitutional rights in the context of national security issues, assurances that such a commission will not lead to attempts to suppress dissent are unconvincing.

Tamil Rehabilitation Organization and its U.S. Branch Shut Down

On Nov. 15, the U.S. Department of the Treasury designated the Tamil Rehabilitation Organization, Inc. (TRO) as a supporter of the group Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, charging that TRO was a fundraising front. TRO's offices in 18 countries, including one in Cumberland, MD, were also designated. The designations, authorized by Executive Order 13224, prohibit Americans from engaging in financial transactions with designated groups and freeze any assets the groups may have under U.S. jurisdiction. TRO says that the freeze on its assets will prevent 300,000 people from receiving assistance, terribly impacting the Tamil people, and will cause further suffering to vulnerable populations. Meanwhile, any efforts to have its U.S. designation removed are

unlikely to be successful, since to date, the courts have upheld Treasury's authority to designate other groups even when the designation is based on secret evidence and where the group is not afforded due process.

Treasury's press release stated, "In the United States, TRO has raised funds on behalf of the LTTE through a network of individual representatives. According to sources within the organization, TRO is the preferred conduit of funds from the United States to the LTTE in Sri Lanka. TRO also has facilitated LTTE procurement operations in the United States. Those operations included the purchase of munitions, equipment, communication devices, and other technology for the LTTE." According to Treasury, because of the humanitarian fundraising after the 2004 tsunami, LTTE was able to use the aid from TRO to strengthen its military operations.

Subsequently, the Internal Revenue Service (IRS), in Announcement 2007-113, said it suspended the tax-exempt status of the charity located in Cumberland, MD, because of the charity's ties to terrorism. The group was recognized in the U.S. for twelve years. TRO's mission, according to its USA website, is to "bring relief to the people of North-eastern Sri Lanka by facilitating the provision of food, clothing and shelter and Provide help via self development programs amongst the people of North-eastern Sri Lanka."

Robert Blake, the U.S. Ambassador to Sri Lanka and the Maldives, held a press conference after the group was designated, during which Deepam TV, a European Tamil television outlet, asked how much money was frozen. In response, Blake said that information could not be released. However, the TRO's latest IRS Form 990 reported that the group raised over $1.6 million in 2006.

On Nov. 22, the government of Sri Lanka banned TRO. Reuters quoted cabinet spokesman and minister Anura Priyadarsana Yapa as saying, "We have found this organization is funding the LTTE, so now we have decided to proscribe TRO in Sri Lanka at yesterday's cabinet meeting."

In response to the actions, TRO issued a press release stating, "TRO wishes to state categorically that all funds received are utilized according to the wishes of the donor, in line with the stated mission of TRO, to assist the tsunami and war affected populations of the NorthEast. None of these funds are, or have ever been found to have been, misappropriated for use by any other organization or used inappropriately by TRO itself." TRO-USA plans to appeal to Treasury to review the decision and remove the designation.

The the U.S. branch charity's president, N.A. Ranjithan, defended the work of the organization. In an editorial in the *Cumberland Times-News* on Nov. 29, "Sri Lankan charity president responds to story", Ranjithan said, "TRO in Sri Lanka assists TRO-USA in appraising projects and programs needed and in implementing such agreed operations. TRO-USA itself monitors all programs so financed including field visits by myself and other representatives from the U.S.A., until the outbreak of intensified war in April 2006 made travel in affected areas virtually impossible. ... As a charity registered in the U.S.A., TRO has

diligently and faithfully been complying with the laws and all regulations related to registered charities. TRO-USA reiterates that it is NOT a 'front to facilitate fundraising for the Libertarian Tigers of Tamil Eelam (LTTE).'"

The TRO received international media attention after its involvement in the relief effort in Tamil areas after the 2004 Asian tsunami. UNICEF worked with TRO to carry out the Action Plan for Children Affected by War, a signed human rights agreement between the LTTE and the government to help children affected by the conflict in the North and East Sri Lanka. According to Human Rights Watch, UNICEF had no choice but to work with TRO. "The TRO is not going away. A representative of UNICEF's Kilinochchi office, which administers the center, said, 'If it hadn't been with the TRO, the transit center would have been impossible. The TRO has a strong presence in the North-East. They have trust from the LTTE, so there are advantages to working with the TRO.'" This highlights the difficulty of providing aid in such a volatile area.

The TRO was the subject of a UK Charity Commission Inquiry from 2000 to 2005, after the commission received allegations that the charity was supporting terrorist activity by transferring funds to Sri Lanka in support of LTTE. The Commission found that "the Trustees had not been able to account satisfactorily for the application of charitable funds of the Charity and also concluded that the trustees were not administering the charity to an acceptable standard." The commission determined that the group's recordkeeping was adequate and did not provide funds to the LTTE. "However, the results of the review suggested that the TRO SL [Sri Lanka] liaised with the LTTE in determining where funds could be applied. It also found that once funds had been received by TRO SL, they were used for a variety of projects which appeared to be generally humanitarian, but not necessarily charitable in English law nor in line with the Charity's objects." The organization is no longer registered in the UK.

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