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## The Watcher

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## Reform Bills Mount, Both Houses Plot Course of Action

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

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

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

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

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

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

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

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

## **The Collins Hearing**

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

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

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

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

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

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

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

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

## Moving Legislation Forward

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

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

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

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

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

## **New Lobby Reform Legislation**

H.R. 4682 The Honest Leadership and Open Government Act, sponsored by Rep. Nancy Pelosi (D-CA)

[H.R. 4667](#) The Lobbying Transparency and Accountability Act of 2006, sponsored by Rep. Mike Fitzpatrick (R-PA)

[H.R. 4696](#) Restoring Trust in Government Act , sponsored by Rep. Mike Rogers (R-MI)

## **New Earmark Legislation**

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

## **New Disclosure Legislation**

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

## **Inquiry into Gov't Spying on Nonprofits Expands**

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

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

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

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

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

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

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

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

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

## **Nonprofits Call for Withdrawal of Anti-Terror Financing Guidelines**

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

the comments submitted by the nonprofits.

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

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

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

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

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

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

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



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

The Working Group expressed further concerns:

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

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

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

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

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

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

## **Blackout Period Begins for Some Nonprofit Broadcasts**

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

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

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

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

## **White House Adds Bricks to Its Congressional Stonewall**

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

### **Stonewalling on Katrina**

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



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

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

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

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

## **Stonewalling on Domestic Spying**

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

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

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

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

## **Stonewalling on Jack Abramoff**

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

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

## **Conclusion**

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

## **State, Local Officials Try to Block Federal TRI Changes**

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

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

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

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

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

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

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

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

## **Chemical Safety Board Wants Crime Scene Procedures at Chemical Accidents**

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

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

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

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

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

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

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

Suite 650, Washington, DC 20037.

## **Openness: The Best Defense Against Bioterrorism**

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

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

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

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

### **Improved Quality of Research**

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

### **Difficulty of Regulating Life Sciences**

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



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

### **Excessive Financial Costs**

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

### **Emergence of a Biological Research Black Market**

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

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

## **Update: Criticism of Domestic Spying Remains Steady**

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

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

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

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



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

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

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

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

### **No Stickler for Safety**

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

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

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

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

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

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

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

## **Foulke's Anti-Worker Record**

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

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

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

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

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

## **Congress to Have Short Year; Appropriations Work Likely to Suffer**

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

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

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

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

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

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

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

## **Final Budget Bill Passed; Tax Bill Sent to Conference**

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

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

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

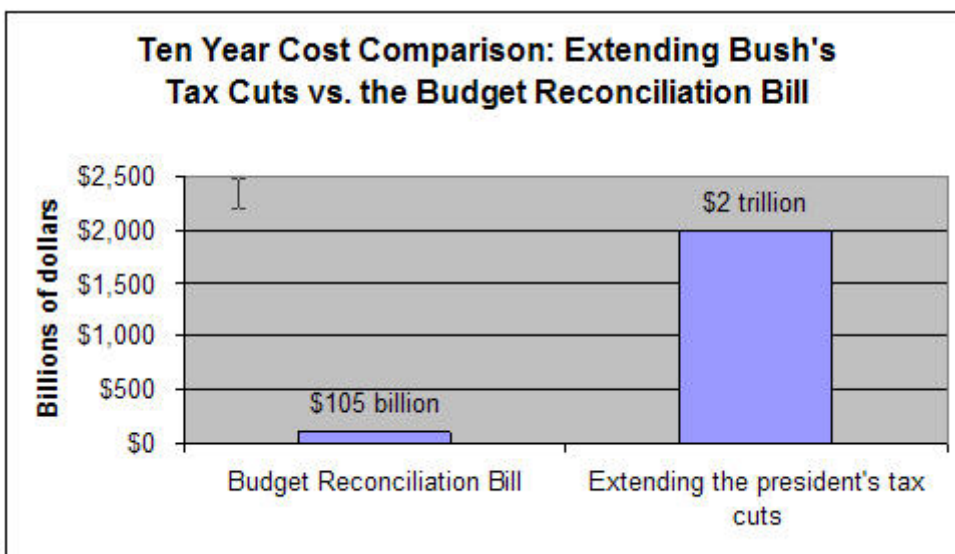
Democrat did not vote. All House Democrats voted against the bill, with the exception of Earl Blumenauer, who was out of town.

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

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

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

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



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

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

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

## **Initial Analysis of the President's 2007 Budget**

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

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

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

### **Extension of Tax Cuts Projected for One Year**

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

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

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

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

## Domestic Discretionary Spending Squeeze

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

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

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

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

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

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



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

## **PART Scores and Continued False Rhetoric About Performance Measures**

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

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

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

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

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

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

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

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

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

**more than Japan and the European Union combined."**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Conclusion**

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

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

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