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State Budget Crises Begin to Result in Actual Cuts

While much has been written recently about the federal budget deficit, states across the country are continuing to struggle under budget crises of their own. Most states are required by law to balance their budgets. While the federal government often carries large deficits to finance its programs and priorities even when revenues are not sufficient, this is usually not an option for state legislatures. Often, the resulting deficit financed federal policies are responsible for making state fiscal situations worse.

According to a report from the Center on Budget and Policy Priorities, shifting health care costs, federal tax cuts, federal restrictions on state taxing authority, and unfunded mandates such as No Child Left Behind have all placed added strains on state budgets, and are partially responsible for the massive deficits currently seen in some states today. In fact, the National Conference of State Legislatures has reported that “despite an improving economy, states still must close … a $ 36 billion [collective budget] gap in the fiscal year 2005.”

These state deficits are not without consequences. As state legislatures convene early in 2005 to construct their budgets, many will be weighing the option of cutting government services in order to bring budgets into balance. For example, significant cuts are currently being debated in Tennessee, New York, California and Florida. Cuts to programs in these states give some relief to soaring deficits, but they will have a disproportionate negative effect on state residents, especially at the lower end of the economic scale.

Tennessee is currently experiencing budget trouble because the Medicaid program makes up such a high percentage of the state’s budget that the program is becoming unsustainable financially. Medicaid costs have increased nationwide by 63 percent over the past five years and that increase has put a strain on state Medicaid budgets across the country.

Tennessee Governor Phil Bredesen (D) recently announced he is cutting TennCare, one of the nation’s most innovative health programs for the working poor. TennCare is the state’s Medicaid program which covers nearly 25 percent of all residents and 40 percent of all births. The program provides health insurance for many of the state’s working poor. Under Bredesen’s proposed cuts, 323,000 low-income adults will be removed from the program, and an additional 400,000 will see services limited. In addition, law enforcement officials are predicting many of the mentally ill patients who are cut from TennCare will cause added strains on the criminal justice system. This will not increase the burden for other programs in the state, but it will also mean Tennessee has inadvertently chosen to embrace incarceration over treatment or rehabilitation – not necessarily a sound financial decision.

The reason for this massive cut is that Tennessee cannot afford the government health plan; according to the *Washington Post*, Bredesen says the expanded Medicaid program is devouring the state budget. Increases in costs to the Medicaid program threaten to cut into funds for other state programs, like education. By cutting Medicaid, however, the state will also lose $ 1.1 billion in federal matching funds. Health care advocates nationwide see this as one step in a growing trend of states being forced to scale back government funded care.

New York is also experiencing budget difficulties that may be resolved through cuts to health programs. Medicaid is the state's biggest and fastest-growing spending category, and Gov. George Pataki (R) is calling for cuts in planned growth to the $ 44.5 billion program. Pataki has proposed slashing $ 1 billion from the state's Medicaid program. Even though this cut would technically have 2005 spending levels up over last year's, benefits for poor and working class New Yorkers would be sharply reduced. The state's insurance program for the working poor, called Family Health Plus, currently serves 340,000 people. While some political analysts and government aides are noting this proposal is only intended to trim the current spending, others are more fearful of the consequences, especially for those 340,000 people. Kenneth E. Raske, the head of the hospital association, said in the statement that "the magnitude of these proposed cuts is unbearable, and if these cutbacks actually took place, the care of all hospital and nursing home patients would suffer." Luckily, Pataki still has to get his plan through a legislature that, according to the *New York Times,* has "deep political investments in the Medicaid status quo."

In California, Gov. Arnold Schwarzenegger (R) has submitted a $ 111.7 billion budget proposal that freezes spending on schools, highways, and the poor. He is freezing education spending and instead proposing specific incentive proposals California Teachers Association President Barbara Kerr called "a smoke screen for the governor cutting funding and breaking his promises." Schwarzenegger is trying to avoid raising taxes, and instead is focusing on spending controls with this year's budget. Even though California is running a $ 9.1 billion deficit, the governor refuses to consider taxation as a way to help balance the budget. As a result, he is facing opposition from Attorney General Bill Lockyer, and State Treasury Secretary Phil Angelides, and the state legislature in passing his budget. Assembly Speaker Fabian Nunez (D) stated, "I will not support a budget that starves Californians of the services that they depend on." For more on the situation with California's budget, read this article.

In perhaps the most egregious example, Florida Governor Jeb Bush (R) is proposing a change to the state's Medicaid program that would make Florida the first state to allow private companies to decide the scope and nature of services in the state run program. Under the plan, Medicaid recipients in Florida would be allotted a sum of money to purchase their own private health insurance. This decision will have profound implications for the state's 2.1 million Medicaid participants as it essentially will work to privatize the Florida system and move people into private managed care programs. This change is being promoted by Bush as a way to cap the costs of the state's Medicaid program.

In the report "Facing the Fiscal Crises in State Governments: National Problem, National Responsibilities," Robert Behn and Elizabeth Keating state, "the existing, built-in financial demands of the states' current responsibilities are growing more rapidly than are revenues." Instances such as California's $ 9.1 billion deficit are due not only to irresponsible budgeting, but also to this tension between output and revenues.

States across the country, including California, Florida, New York, and Tennessee, are being increasingly squeezed because the federal government is not allocating as much money to them as in the past, yet at the same time are expecting them to fully fund the programs and policies passed in the U.S. Congress. The result, not surprisingly, is that state politicians – many of whom are scared or unable to raise taxes – end up making cuts to programs instead. This leaves people, many of whom are dependent upon government services, even more vulnerable.

There are other alternatives to slashing low-income Americans from their health insurance and other government supports. In Indiana recently, Gov. Mitchell Daniels (R), a former Bush administration budget chief, asked for an income tax increase on the state's wealthiest citizens, those who make over $ 100,000 annually. Daniels is quoted as telling the state legislature, "With this money, we will achieve a balanced budget... and bring our savings account to a level near the minimum standard of prudence. Let's each agree to do a thing or two we'd rather not do, temporarily, so that the state we all love might get back on its fiscal feet." Mitchell's fiscally responsible and progressively oriented actions spreads the burden of providing for those who have the least across the entire population of Indiana – rather than letting the poor shoulder the burden. His example is one that could easily be followed by other governors and even the president himself in his FY06 budget. Unfortunately, it seems as though Daniels is alone in his commitment to preserving essential services for the poor.

Social Security Will Impact More Than Just Seniors

One of the most gaping holes in the debate on Social Security reform is the lack of discussion about Social Security as a life and disability insurance program. The program insures much more than just the elderly in retirement; fully one-third of payments go to non-retirees. These benefits – to around 17 million Americans – insure workers and their families from slipping into poverty when a worker becomes disabled or dies.

The issue of disabled workers sheds light on many of the problems of private account proposals. These benefits are vital. If a worker earning $ 32,000 per year (near the national average) dies, Social Security replaces about 78 percent of his or her annual earnings (or $ 25,000). The Social Security Administration has calculated that for a family with two young children, the Social Security program provides the equivalent of a $ 400,000 life insurance policy or a $ 350,000 disability insurance policy.

This is guaranteed insurance and security for unexpected life events that private accounts cannot provide, even in the best

of circumstances. Almost three in 10 of today's 20-year-olds will become disabled before they are 67 years old. Since approximately 78 percent of the private workforce in America has no disability insurance, the role of Social Security as a disability insurance program is crucial.

The president's 2001 Social Security Commission proposals did not recommend changes in the disability benefits program. However, all cost calculations assume disability benefits, as with retirement benefits, will be reduced by up to 46 percent. This incongruity has had disability advocates worried from the start. According to the *Chicago Sun-Times*, Marty Ford of the Consortium for Citizens with Disabilities feels, "anything [that is done] to the retiree formula will affect people with disabilities."

One of the main problems with the proposals for private accounts that has advocates and others worried is that disabled beneficiaries typically work less and need benefits sooner in life. This shorter timeline would negate some of the perceived benefits of private accounts, as there would not be enough time to accumulate the money needed to support a disabled worker. This point was noted by the Commission in their report, saying that disabled beneficiaries most likely would not have their full lives to accumulate enough funds in their private accounts to supply the same levels of benefits the current system does.

In addition to disabled workers themselves, Social Security provides benefits to spouses, children, and parents. Approximately 5.4 million children under age 18 receive part of their family income from Social Security. Private accounts may make up the cut in benefits necessary to create the accounts, but only for those who work to retirement. The families of those who don't last will certainly get less – at a time when they absolutely need more. Social Security provides much more than supplemental income at retirement – it provides life and disability insurance to protect against calamities and unplanned events for millions of Americans. Throughout the Social Security debate, it will be important for lawmakers and all those involved in the process to keep this fact in mind.

Will Bush's Social Security Reform Plan Succeed?

President Bush has been clear that Social Security reform is a top priority in his second term. Even though he has not announced a plan, he expressed his desire to allow people the option of creating private – or in Bush language, personal – investment accounts. Given the necessity of benefits cuts as well as heavy transition costs years into the future, several high-ranking Republicans have begun expressing doubts about the president's plan. Moreover, many are beginning to question whether Social Security really has a "crisis" as Bush claims.

According to the Century Foundation, what the public wants is far different from the administration's top priorities. In fact, four recent polls found many Americans feel differently than the president on this issue and think there are other government priorities that deserve greater immediate attention than Social Security.

The Pew Research Center poll found that 65 percent of people agreed with "keeping Social Security as a program with a guaranteed monthly benefit based on a person's earnings during their working life," which is how the system is currently structured. The new Time/SRBI poll found people divided on the issue of whether or not this country is facing a Social Security "crisis." The poll also found 56 percent of respondents believed they would fare better under the current system (in contrast to the 33 percent who felt otherwise), compared with how they think they would fare under a system requiring them to invest some of their payroll taxes in stocks and bonds. The Washington Post/ABC News poll found Bush's approval rating at only 38 percent overall on Social Security, and an even lower 33 percent among people ages 18 to 30. Finally, a New Annenberg survey found 86 percent of respondents opposed to a Social Security proposal with the following premise: "When current workers retire, giving them lower benefits than what they are now promised."

It is clear there is neither a mandate nor majority support for overhauling the Social Security program in the way President Bush intends. Not only is the public skeptical, but so are many leading members of Congress, including some key Republican lawmakers. On Jan. 18, Rep. Bill Thomas (R-CA), chairman of the House Ways and Means Committee, publicly predicted partisan conflict over Social Security will quickly render President Bush's plan for reform a "dead horse." Thomas prefers to begin the reform debate with a broader approach and carefully consider any option that would ensure the solvency of Social Security. Options he said should be examined among others include changing Social Security's financing mechanism and possibly adding a savings plan for long-term or chronic care as "an augmentation to Social Security payments." He reiterated these points on talk shows the subsequent weekend.

Sen. Lindsey Graham (R-SC) has shown equal skepticism about the administration's proposals by suggesting raising payroll taxes on the wealthy in order to finance Social Security reform. Other political figures, such as former House Speaker Newt Gingrich and Rep. Rob Simmons (R-CT) have also voiced levels of opposition. Some have criticized what they feel has been a mishandled policy initiative by the administration; others believe a fresh start in rethinking the situation is necessary in order to gain bipartisan support. Sen. Charles Grassley (R-IA), chairman of the Senate committee that handles tax policy and Social Security, has stated multiple times he believes the Senate needs to begin working on a reform plan first rather than having details handed-down by the White House in order to have the proposal succeed.

Despite bipartisan criticism and speculation of Bush's plans for reform, interest groups on both sides have already geared up to lobby Congress when reform is addressed this year. The banking lobby is currently appealing to both the administration and key members of Congress in an effort to secure a profit if any sort of personal savings accounts are included in Social Security reform legislation. The group America's Community Bankers are hoping they can convince lawmakers to include high-yield, federally insured savings products as investment options if personal savings accounts are created. According to an article in *The Hill* on Jan. 19, banks, bond traders, and investment houses are expected "to stand behind Bush in his push to divert a portion of payroll taxes to private markets." Financial organizations are particularly

interested because private accounts would channel huge sums of revenue out of a traditional government program into their coffers and be a guaranteed long-term source of income for the financial services industry. The financial services lobby will prove to be an important ally for an administration facing intense opposition both from within their own party and from powerful advocacy groups outside of the government such as AARP.

The president is expected to discuss his proposal in his State of the Union address on Feb. 2, although details will most likely not be released until late February.

Budget Battles Loom as Advocates Prepare

Advocacy groups and policy experts are gearing up for the difficult and crucial budget battles anticipated this year in Congress. A number of briefings and conference calls recently have been held to educate and prepare people in Washington, DC, and around the country.

On Jan. 13, many gathered in Washington, DC, to hear presentations on the budget outlook and expected timetable in 2005, explanation of the budget reconciliation process (which may be especially crucial this year), materials on spending caps, and how-to guides to debate and discuss budget issues. The briefing was co-hosted by the Center on Budget and Policy Priorities, AFSCME, the Coalition on Human Needs, Fair Taxes For All, the National Women's Law Center, the National Education Association, and OMB Watch.

Also last week, the Coalition on Human Needs held two conference calls on many of the same topics, in which more than 400 advocates from around the country took part. The aim was to give state and local advocates the tools and knowledge they need to get involved in the federal budget debate. Materials from that briefing are available on CHN's website.

NRC Censors Environmental Impact Statement

The public will not have access to health and safety data about a proposed uranium enrichment plant in New Mexico, despite a legal requirement that the public have ample access to such information.

Louisiana Energy Services plans to build a facility in Eunice, NM, which is located in the southeast part of the state. The Nuclear Regulatory Commission oversees such facilities, and the National Environmental Policy Act requires government agencies, including NRC, to prepare publicly available Environmental Impact Statements (EIS) for projects that could damage the environment, and acknowledge and respond to public comments.

The process of informing the local community and allowing it to participate in the decision of locating such plants is important. In the past, when uranium enrichment plants have been proposed in communities such as Homer, LA, and Hartsville, TN, residents' concerns about health risks motivated them to strongly oppose the plants.

However during the process in the Eunice case, the NRC only briefly supplied the EIS for the proposed plant but in October 2004, NRC took down its entire website in response to concerns about access to "sensitive" information. As a result, the Eunice EIS was no longer publicly available.

Then just two weeks prior to the end of the comment period, NRC posted a significantly redacted version of the EIS, removing basic health and safety information, including occupational, transportation and worst-case accident scenarios. This is the information that the public needs the most in order to comment on the placement of such a facility in their community.

The agency's actions blatantly violate public disclosure laws that have been in place for over 30 years. NRC has intentionally hampered the public's ability to learn about and provide input on a project that could greatly impact public heath and safety.

These concerns are especially important in the case of uranium enrichment facilities. Existing plants in Piketon, OH, and Paducah, KY, reportedly make plant workers sick and contaminate the area's soil and water with radioactive uranium.

Please send NRC Chairman Nils Diaz a letter through our action alert system condemning NRC's process of railroading the location of this facility without properly notifying the public of the associated health risks.

Data Quality Update: Court Decision Appealed

In a Jan. 14 news release, the Salt Institute announced that it would appeal the dismissal of its data quality case against the National Heart Lung and Blood Institute (NHLBI). The Salt Institute along with the U.S. Chamber of Commerce had filed suit against NHLBI claiming that statements made by the agency about health benefits from lower sodium diets did not comply with the Data Quality Act.

However, U.S. District Court for the Eastern District of Virginia dismissed the case Nov. 15, 2004, ruling that the Data Quality Act (DQA) was not judicially reviewable and that the plaintiffs lacked legal standing to bring the lawsuit. The Salt Institute and the U.S. Chamber of Commerce have decided to appeal these rulings in an attempt to reinstate their case against NHLBI. "Our appeal is for more transparency in the use of science," claimed Richard L. Hanneman, President of the Salt Institute, "and we are asking the court to banish the games-playing and data manipulation that has compromised implementation of the Data Quality Act by the National Heart, Lung and Blood Institute."

Dissecting a Data Quality Challenge

The Center for Progressive Regulation (CPR) recently sent letters to the Environmental Protection Agency (EPA) and Office of Information and Regulatory Affairs (OIRA) as well as Dow, Exxon, Shell, Ethyl and Clean Harbors Environmental Services corporations regarding contamination at the Devil's Swamp Superfund site near Baton Rouge Louisiana.

In 2004, after years of deliberation, the site was proposed for inclusion on Superfund's National Priorities List. However, NPC Services, a corporation formed by numerous chemical and oil companies to clean up hazardous waste sites, opposed the listing by submitting a data quality challenge to EPA. The agency elected to consider the data quality petition a part of NPC Services' public comments in response to the site's listing.

CPR's letters voice concerns that the data quality challenge and EPA's decision to handle them as additional comments could further delay action to finally cleanup the hazardous waste site. EPA stated that the issues brought up in the challenge are delaying the listing. The letters also request that EPA and the companies address the issue of subsistence fishermen living near the site and provide alternative food supplies while cleanup is pending. CPR also urged EPA and OIRA to issue guidance barring the application of the DQA to rulemakings.

Congress Seeks Additional Information on DQA

On Jan 13, Rep. Joe Barton (R-TX), Chairman of the House Energy and Commerce Committee, sent letters to 15 federal agencies and commissions requesting information on the implementation of the DQA. Barton explained that the request was to help the committee "assess directly whether the agencies are implementing and following data-quality procedures as Congress intended." However, the lack of any hearings or floor debate on DQA coupled with the meager ten lines of legislative language that comprise the act give little indication of Congress's intention for the DQA.

The committee also seeks to examine the general impact and effectiveness of DQA requirements. The letter requested answers to nine detailed questions about implementation of the DQA from January 2001 to the present. Unfortunately, the questions deal almost entirely with procedure and policy, including requests for job titles of those responsible for overseeing DQA and copies of internal memoranda. None of the questions address concerns about abuse of the DQA process by industry to further delay that development of rules and regulations. Nor do any of the questions request estimations of cost or time spent by the agencies and commissions implementing the DQA so that the committee could evaluate the effectiveness of the act.

In one interesting question Barton asks the agencies to "describe and explain your agency's position regarding the potentially available appellate avenues, including administrative hearings and the federal court system, as a means of petitioners to appeal agency decisions relating to DQA." However, the federal courts, not agencies, decide whether an issue may be heard and as noted above the courts have already ruled that the DQA is not judicially reviewable.

Barton instructed the agencies and commission to provide the requested documents and answers by Jan. 28, giving the agencies only two weeks to gather the information.

DHS Cancels Nondisclosure Agreements for Unclassified Information

The Homeland Security Department (DHS), under pressure from congressional offices, federal employee unions and the media modified it policies for "Sensitive But Unclassified" (SBU) information and stopped requiring nondisclosure agreements.

DHS officials were requiring that all agency employees sign a strict non-disclosure agreement for unclassified information that was deemed "sensitive" and had even begun asking congressional aides to sign the agreements. The nondisclosure agreements prohibited signers from publicly disclosing any information from DHS deemed "sensitive" or labeled "For Official Use Only" even though the information was unclassified. For more information read OMB Watch's previous article.

Janet Hale, Undersecretary for Management at DHS, issued a Jan. 11 memo to senior department heads explaining the new policies for protecting SBU information. Under the new SBU directive, signed Jan. 6, employees and contractors will no longer have to sign nondisclosure agreements to access SBU information and all previously signed agreements are no longer valid. Instead, the new directive stresses education and awareness to foster the appropriate level of protection for SBU information.

Clearly DHS will also desist in requesting congressional offices to sign such agreements. The original SBU directive never mentioned such requirements and congressional offices from both parties refused to sign the forms when approached, and voiced strong complaints to the requests.

Several areas of concern with the directive remain unchanged. For instance, DHS's policy still allows any employee or contractor to label information, "For Official Use Only." The directive also maintains the overly broad and vague definition for SBU as "any information that could adversely affect the national interest or the conduct of federal programs."

Bill to Allow Campaigning by Religious Organizations Back in House

On Jan. 4, Rep. Walter Jones (R-NC) introduced H.R. 235, the Houses of Worship Free Speech Restoration Act of 2005. The bill would amend the Internal Revenue Code to allow religious congregations to support or oppose candidates for public office and conduct partisan campaign activities without losing their tax-exempt status, as long as the activity takes place in the context of a religious service or gathering. While narrower than previous proposals, the bill still unfairly favors religious organizations over other nonprofits and allows tax-deductible contributions to support partisan activities.

The bill is the latest in a series of attempts by Jones, who introduced the first version of the bill in June 2001 (The Houses of Worship Political Speech Protection Act or HOWPSPA). Congress has consistently rejected the proposal, which has been opposed by nonprofits, clergy and campaign finance reformers. Currently, tax law prohibits all religious, educational, charitable and other organizations exempt under section 501(C)(3) of the tax code from opposing or supporting candidates for office. H.R. 235 would change that for religious organizations.

H.R. 235 is narrower than earlier versions of the bill in that it limits the *type* of activities permitted, but it is more expansive in that there is no ceiling on the number of activities that could be permitted. Under H.R. 235, the permitted campaign-related activities would have to occur in the "content, preparation, or presentation of any homily, sermon, teaching, dialectic, or other presentation made during religious service or gatherings," but *any* amount of these activities could be conducted provided they were part of the presentation at a religious gathering. However, religious organizations would be precluded from making campaign contributions or paying for advertisements in newspapers.

Since this language would permit any activity that could be deemed part of a sermon or other presentation during a religious service, it allows for the express endorsement or opposition to a candidate for public office during a sermon. Religious leaders could request that contributions be made directly to the candidate's committee or other political organizations or even individual contributions of services to political campaigns. They could appeal to their congregations to vote for particular candidates.

Compared to last year's version the bill also narrows what the houses of worship can do outside of the service facilities. Under the Houses of Worship bill introduced in the 108th Congress, the church could reprint the sermon or minutes of the gathering and mail them to church members and the general public. In contrast, the Houses of Worship bill introduced in the 109th Congress restricts churches to expressing personal opinions so long as these views are not disseminated beyond the members and guests assembled together at the service. It specifically restricts mailings that result in more than an incremental cost to the organization and any electioneering communication as defined by the Bipartisan Campaign Reform Act of 2002. However, FEC regulations have interpreted broadcasts by Section 501(C)(3) nonprofit corporations as exempt from the definition of "electioneering communication."

Current law protects the integrity of charitable nonprofits by preventing individuals from using tax-deductible contributions to avoid tax and legal restrictions that apply to political donations. It also prevents individuals from using charitable nonprofit organizations, which are, by definition, organized for public purposes, to advance their personal partisan political views. Supporters of the bill claim religious leaders are afraid to speak out on public issues. However, all 501(C)(3)s, including religious organizations, are allowed to engage in advocacy activities such as lobbying, public education campaigns, comment on public policy, and litigation.

This regulation exists to protect the integrity of the election process. The 501(C)(3)s receive a tax-exemption because

their work is educational, religious or charitable. It is an acknowledgment that the organization performs an activity that relieves some burden that would otherwise fall to federal, state, or local government. Taxpayers should not be required to fund the political activities of tax-exempt organizations.

Additionally, tax-exemption is afforded to churches as a safeguard to preserve separation of church and state by preventing governments from using taxation to favor one religion over another. Allowing churches to advocate for one political party or another would blur the line between the separation of church and state. The money in the collection plate should not pay for bumper stickers or attack ads on behalf of a politician or political party.

Court Rules on Key Issues on Funding Faith-Based Groups

A Jan. 11 ruling by a federal district court judge in Wisconsin in a complex case challenging the federal faith-based initiative has blocked funding to a program that incorporated religious content into government funded activities, but dismissed a claim that another program discriminated against secular nonprofits in awarding subgrants. *Freedom From Religion Foundation v. Towey* may be appealed by both sides.

In June 2004 the Freedom From Religion Foundation (FRFF) filed a broad constitutional challenge to the federal faith-based initiative, but was limited to questions relating to two specific grants in November when the court dismissed the broad case for procedural reasons. The two grants in questions represent two of the most difficult issues involved in the faith-based initiative:

- Are grants or subgrants awarded in a discriminatory manner, favoring religious groups?
- Can and will the government enforce the ban on including religious content in government funded activities?

In this case the judge found FFRF did not meet the burden of proof required to show discrimination in favor of religious groups in awarding subgrants in a program funded by the Compassion Capital Fund, even though 80 percent of the subgrants went to faith-based groups. The grant involved was to Emory University's Rollins School of Public Health for a three-year program that involved subgrants to partner foundations that in turn provided technical assistance and small subgrants to faith-based and community organizations focusing on community health needs.

The court found Emory's criteria for selecting partners to be neutral, although all eight had a religious affiliation. The neutral criteria included whether the potential partner had an independent funding base and an ability to collaborate with other faith-based or community organizations. Some of the partners favor faith-based organizations in making grants with their private dollars. There was no proof that Emory conducted an open competition for partner selection.

In the first year 19 of 23 subgrants made by these partners went to faith-based organizations. In the second year 26 of 31 subgrants went to faith-based groups. However, the court held that this alone was not sufficient to overcome the presumption that a constitutional government program is implemented in a constitutional manner. If the ruling stands it will be difficult for future plaintiffs to prove discrimination. A claim may require a more qualified secular group that did not seek funding to challenge a grant to a less qualified faith-based organization.

The second grant in the case involved MentorKids, which received a grant from the Department for Health and Human Services (HHS) to provide services to children of prisoners. MentorKids made no effort to separate its religious activity from its publicly funded program. Mentors were required to submit statements on their personal Christian conversion, discuss the Bible with the kids they worked with and submit reports on their religious progress.

HHS did not defend these practices. They suspended the MentorKids grant and asked the court to dismiss the case. However, the court refused because the grant could be reinstated absent a court order barring such action. The ruling bars MentorKids from receiving future grants under its current structure. The blatant disregard for following government rules in this case raises serious questions about the will and ability of the federal government to oversee grants to faith-based organizations. The lack of clear guidance and standards, beyond a very general rule that religious activity must be separated in time and place from government funded activity, contributes to the problem.

Congress Faces First Faith-Based Issues of 2005

A Quarter of HUD's Budget Slashed in Bush's Budget

The Bush administration, in a drastic reversal of election promises, plans to cut $ 8 billion in funding at the Department of Housing and Urban Development (HUD), in programs often administered by faith-based organizations, resulting in a reduction of the agency's $ 31 billion budget by almost a quarter.

The Community Development Block Grant (CDBG) is one of the programs that would be drastically reduced, greatly affecting state and local faith-based and community programs. CDBG, a $ 4.7 billion program, gives money to state and local governments to fund a variety of programs, including day care centers, literacy programs and housing development. Many of the faith-based organizations that provide these programs get their money through CDBG grants.

The White House rationale for the funding cuts is the lack of accountability in the programs. According to a White House

spokesman, many of the programs have not been able to demonstrate effectiveness and have experienced fraud. However, the White House Office of Faith-Based and Community Initiatives has not set benchmarks for the recipients of its grants and the program has long lacked any standards of accountability. Instead of funding cuts, it is indicative of a need to institute benchmarks and standards of accountability for grant recipients.

The funding cuts are surprising to some, as campaign rhetoric indicated an increase of money into the faith-based program. Additionally, a White House analysis of HUD funding to faith-based groups indicated that the agency awarded a greater percentage of grants to faith-based organizations than secular organizations.

WIA Reauthorization Would Codify Discrimination in Hiring

On Jan. 4, Reps. Howard "Buck" McKeon (R-CA) and John Boehner (R-OH) introduced the Job Training Improvement Act, legislation that aims to strengthen and improve America's job training system to help states and communities ensure workers get the training they need to find good jobs. The bill is a reauthorization of the Workforce Investment Act (WIA), and would ensure access to job training, counseling and search information to help individuals get back on their feet.

However, this legislation also seeks to codify discrimination in hiring for federally funded positions by religious organizations. The bill repeals longstanding civil rights protections designed to protect workers against this kind of religious discrimination. Since their inception in 1982, these job training programs have included important civil rights protections against employment discrimination based on religious beliefs in programs that receive federal funding.

The original 1998 Workforce Investment Act consolidated 60 federal job training programs into three block grants to the states. It instituted a voucher program for job training services and provided direct services to displaced workers such as job training and employment search assistance.

Importantly, it re-codified the nondiscrimination provision included in the Job Training Partnership Act of 1982. The 1998 legislation received strong bi-partisan support from both the Senate and House in the 105th Congress. This twenty-one year old provision has been successfully implemented since the inception of the job training program, allowing religious organizations to provide essential government services while maintaining a commitment to protecting civil rights and religious liberty.

Post Election Analysis of 527s Dispels Myths, Shows Trends

The Campaign Finance Institute (CFI) held a briefing on Jan. 14 that provided a glimpse of findings in its soon to be published book *The Election after Reform*. In a special presentation on independent political committees (often referred to as 527s) CFI analyst Steve Weissman said these groups did not become substitutes for party soft money that could no longer be given to political parties under the Bipartisan Campaign Reform Act of 2002 (BCRA). The findings provided more detail on 527 groups based on data and interviews conducted after the election and compared with data from 2002.

Much of the justification for last year's proposals to regulated independent political committees like campaigns and parties stemmed from a fear that independent groups would replace soft money that formerly went to parties. The CFI findings show that soft money actually decreased in 2004 by $ 302 million. In addition, most of the federal 527 funds in 2004 came from one-time groups, as opposed to established political committees active in previous elections.

CFI found that individuals were by far the largest source of funds for 527 groups. Individuals gave 527s over $ 250 million, while labor gave less than half that, and business contributions were even smaller. Donations from business decreased from 2002 levels, while labor donations nearly doubled.

In 2004 the number of individual donors giving to 527s rose to 1,882 from 1,231 in 2002. While the vast majority gave in the $ 5,000 to $ 100,000 range, 56 percent of the money came from contributions of $ 2 million or more.

The make up of these 527 groups is complex. CFI's statement said, "We also discovered that the simple image of Republican-created vs. Democratic-created 527s overlooked important political distinctions between groups that existed before BCRA and those constructed afterwards." They went to note that parties and consultants helped foster development and fundraising for 527s in 2004.

CFI sees a large potential for expansion of 527 activities in upcoming federal elections. Weissman noted that "the effectiveness of potential regulation of 527s in eliminating soft money will depend, in part, on whether the FEC and IRS develop a coherent policy relating to alternative nonprofit vehicles for soft money.

House Bill Calls for Agency Performance Ratings

A controversial bill that would require yet more burdensome analysis of regulatory and other government programs has resurfaced after passing the House but stalling in the Senate during the 108th Congress.

Rep. Todd Platts (R-PA) reintroduced the Program Assessment and Results Act (the "PAR Act" or "PARA"), which would authorize the Office of Management and Budget (OMB) to assess the performance of all federal programs at least every five years – or even more frequently for some programs, at OMB's discretion. Packaged in the notionally uncontroversial principle that budgeting decisions should be informed by performance appraisals, the PAR Act would effectively endorse OMB's existing performance review program, make those controversial assessments a permanent fixture in government policy, and contribute to corporate special interests' campaign to reduce regulation through paralysis by analysis.

From GPRA to PART to PAR

The PAR Act is the latest in a long line of efforts to impose government performance measures. The two most relevant to PARA are the Government Performance and Results Act of 1993 (GPRA) and OMB's Program Assessment Rating Tool (PART).

About GPRA

Under GPRA, agencies have been setting performance goals and gauging their success at meeting those goals for a decade. A bipartisan effort to improve government performance as well as public *perception* of government performance, GPRA requires federal agencies to work with OMB and Congress to create strategic plans with long-term goals, develop annual indicators to determine whether goals were being reached, and provide annual performance reports on the results achieved.

There is a gap between the real and the ideal in GPRA. Aside from voluminous reports, there is no obvious sign of GPRA's actual usefulness. In most agencies GPRA appears to have become primarily a compliance activity and nothing more. GPRA has done very little to improve the public perception of government performance, since public awareness of GPRA is almost non-existent and even Congress has shown limited interest in GPRA, even though it is designed to ultimately lead to "performance budgeting," with performance assessments being used as a basis for authorization and appropriation funding levels.

About PART

PART is a duplicative executive branch initiative layered on top of GPRA. In fact, according to a recent GAO report, in some cases PART has eclipsed GPRA – even though GPRA is required by law, and PART is merely an executive branch policy. Created by this administration, PART is a review system aimed at determining performance at the level of individual programs, in contrast to GPRA's agency-wide focus.

The PART consists of six questionnaires designed for different government activities – competitive grant programs, block/formula grant programs, regulatory-based programs, capital assets and service acquisition programs, credit programs, research and development programs, and direct federal programs. Essentially, it consists of "yes" and "no" questions, although in the "results" section of the tool there are some additional gradations.

As with cost-benefit analysis and risk assessments, the PART is yet another complicated and highly technical tool in which potentially controversial political judgments are embedded in faux-objective formulae. With 10 percent of the total score depending on cost-effectiveness and improved "efficiencies," the PART may be yet another vehicle for pushing the agencies to treat industry compliance costs as an equal counterweight to the public interest.

And Now. . . PARA

Platts' bill would amend GPRA and essentially subsume the PART. PARA would require OMB to work with agency heads "to the maximum extent practicable" to select which programs will be subjected to performance reviews in a given year and conduct the reviews. PARA requires all programs to be reviewed at least once every five years, although OMB and the agencies can determine "higher priorit[ies]," "special circumstances," observed improvements, or other factors warranting more frequent reviews for selected programs. The OMB director would be authorized to produce criteria for selecting programs and guidance for conducting reviews.

H.R. 185 does improve slightly upon its predecessor in the 108th Congress by requiring OMB to announce, 90 days in advance of the release of PARA reports, a list of programs picked for review and the criteria to be used in conducting the reviews. OMB would be required to provide for some sort of notice and comment for the program list and the review criteria. Other provisions would address performance reviews that depend upon classified information and classify the reviews as "inherently governmental functions" that cannot be contracted to the private sector.

Problems With PARA

Although the PART would almost certainly disappear with the end of the current administration, the PAR Act would effectively make PART a permanent fixture on the government landscape. Although PARA never mentions PART, the likely

effect of PARA would be that PART would be subsumed under PARA, which has no sunset provision.

The PAR Act would at least assert some congressional authority over the existing practice of PART reviews, which are not currently authorized by any statute. Even so, that authority is only a formality, because the bill supplies no substantive standards against which to hold OMB accountable or to restrain the exercise of OMB's discretion.

The new version of PARA addresses several of the concerns of the Democratic opposition in the 108th Congress, among them a notice-and-comment provision, incorporating agencies themselves in the performance reviews, and a specific provision for handling confidential information. A larger problem remains: that PARA would add to the many analytical burdens that divert increasingly limited resources to "navel gazing" instead of real action to meet public needs. As these burdens – detailed in this law review commentary – are multiplied, regulatory policy runs into the problem of paralysis by analysis. If ensuring the effectiveness of and need for government programs actually were a priority, then these analyses would build in self-checks that stop to review the analyses themselves and assess their actual usefulness. This problem is replicated in PARA, which assumes that performance measurement and related management decisions are inherently valuable enterprises that need never be reviewed for their consequences for the public interest.

Finally, PARA – which is part of a larger trend in the direction of imposing corporate-style outcome- and performance-based management techniques in the public and nonprofit sectors – perpetuates the myth of the perfectly efficient corporate machine. As news reports accumulate revealing accounting scandals, suppression of science and false advertising of harmful products, graft, insider trading, obscene CEO pay-outs unrelated to corporate performance, and board/executive collusions, corporate special interests have been toppling from their undeserved heights. It should be clear by now that the corporate sector is driven by values that are fundamentally incompatible with the values which should govern policy makers charged with serving the public interest. The PAR Act does have a worthwhile goal – improving government – but it threatens to confound its own goal.

EPA Assessment Finds Potential Risk to Humans in Teflon

While an Environmental Protection Agency draft risk assessment for a chemical compound used in the production of Teflon did find that exposure could lead to adverse health effects, EPA fell far short of condemning the chemical or its makers.

In a draft risk assessment on perfluorooctanoic acid (PFOA), a chemical produced by DuPont and used to make the non-stick product Teflon, among other products, EPA has claimed that even low levels of exposure may cause serious adverse health and developmental effects in humans, ranging from increased cholesterol to delays in sexual maturation, while other research suggests even worse consequences such as defects and cancer. The agency did find that PFOA exposure increases levels of cholesterol and triglycerides, which can increase the risk of heart attacks and stroke.

Tilted Science

An analysis of EPA's draft risk assessment by the Environmental Working Group found that EPA has rigged the risk assessment in order to make its own brand of regulatory Teflon: producing a scientific record so compromised that it shields DuPont from regulation. According to the EWG, EPA had "ignored its own science panel's guidance and internal industry research":

> In March 2004, the EPA's Scientific Advisory Panel instructed the EPA that, when assessing the family of chemicals that include [PFOA], the agency had to consider that several types of cancers, including testicular and pancreatic cancers, are relevant to humans.
>
> The Agency ignored the panel's instruction in [the resulting] risk assessment ....

Although EPA's own internal guidelines require that a chemical be considered carcinogenic when it meets any one of five criteria, it dodged the question with the Teflon ingredient — which meets three out of the five criteria, according to EWG.

Ken Cook, president of Environmental Working Group, said, "There's a big difference between sound science and tilted science, and at every turn in this important process, EPA officials favored DuPont."

A 1950s Innovation with Unforeseen Side Effects

PFOA takes years to leave the body and can be found in the environment and animals as far away from factory sources as polar bears in the Artic and dolphins in the Mediterranean. Traces of PFOA have been found in individuals all over the world.

Though only trace amounts of PFOA exist in Teflon products when they hit the market, some scientists believe the chemical may be released as Teflon ages. Other scientists have suggested that PFOA, which is also used in stain- and grease-resistant carpets, clothing and fast-food packaging, may be released into water supplies when carpets or clothing are washed. PFOA found in French-fry boxes, microwave popcorn bags, and hamburger wrappers might be absorbed into the food.

A Case of Regulatory Failure

EPA has now filed suit seeking as much as $300 million in fines from DuPont for withholding important safety information about the chemical. The case highlights a broken environmental regulatory system that relies heavily on industry to police itself. Whereas substances added to food must undergo rigorous testing and review by the Food and Drug Administration, industrial chemicals undergo far less regulation. EPA often must wait for industry to provide information on the adverse health effects of its own products.

According to the *Chicago Tribune*, DuPont has been aware of the potential risk of PFOA since 1961, when company scientists began advising DuPont executives to avoid contact with the chemical. However, the information about the danger of the drug only came out after a couple who lives near the Teflon plant sued the company after the mysterious death of several of their cows. Most of the information about the negative impacts of PFOA was first made public in the court hearings.

In the early 1980s, the company discovered that a DuPont employee had passed the chemical on to her fetus. EPA argues in its lawsuit that this case should have prompted independent analysis of the effects of the chemical. EPA has also accused "DuPont of failing to notify the agency when two of five babies born to plant employees in 1981 had eye and face defects similar to those found in newborn rats exposed to PFOA," according to the *Tribune*. DuPont will also settle a suit next month for as much as $343 million for PFOA contamination in drinking water in Ohio and West Virginia. According to the *Tribune*, "DuPont also has known since at least 1984 that water wells in West Virginia and Ohio were contaminated with PFOA, according to company records. But people who rely on the wells for drinking water didn't find out until 2002, when internal DuPont documents started pouring into court."

Though the company says that it has reduced emissions at the Teflon plant by 90 percent, tests last fall reveal that the level of PFOAs in the Ohio river are the highest to date.

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