OMB WATCH
Promoting Government Accountability and Citizen Participation
ACTION CENTER | BLOGS | DONATE
The Watcher
July 24, 2007 Vol. 8, No. 15

In This Issue

Nonprofit Issues
Pressure to Pass Lobby Reform Grows
New Executive Order on Iraq Expands Problems for Charities
FEC Will Draft Rule Allowing Issue Advocacy Broadcasts
Trial Testing Humanitarian Aid Standards Begins

Regulatory Matters
Bush's Regulatory Changes Set to Go into Effect
Amidst Increased Scrutiny, FDA Wants to Shut Testing Labs
White House Delays Whale Protection Rule

Federal Budget
Questions, Concerns Surround Start of Nussle Confirmation Hearings
Sustaining Presidential Vetoes May Become More Difficult
Reauthorization of Children's Health Insurance Program Gains Momentum
Another Attempt at Ending IRS Privatization Program Moves Forward
OMB Releases Flawed Mid-Session Budget Review

Information & Access
FEMA Ignores Toxic Trailers of Hurricane Victims
Energy Task Force Advisors Revealed, Six Years after Meetings
Baltimore Calls on Congress for More Chemical Security
Surgeon General Warning: Manipulated Science
An Examination of Government Openness

Pressure to Pass Lobby Reform Grows

No one is certain when Congress will leave for its summer recess. Senate Majority Leader Harry Reid (D-NV) has said the Senate will recess only when it has passed several high profile bills, including lobby reform. Progress on this legislation has stalled because Sen. Jim DeMint (R-SC) has used parliamentary procedure to stop Reid from appointing the Senate conferees. One solution to the problem may be that the House and Senate pass identical bills to avoid a conference. However, reform groups have raised concerns about

this process, since it may result in weakened legislation.

DeMint wants assurances that the conference between the House and Senate will keep strong earmark disclosure provisions. However, Reid cannot guarantee specific outcomes. As a result, DeMint has not budged. The Senate bill has strong earmark provisions, but the House bill does not address the issue. Instead, the House addressed the issue through rules changes. DeMint wants both Houses to lock down the rules in legislation.

Democratic leaders want to pass the lobby reform legislation, which also contains ethics changes. It was the first piece of legislation Democrats undertook in the Senate when they took over as the majority party, passing the bill 96-2. A similar measure passed overwhelmingly in the House by a 396-22 margin on May 24.

Since the bill passed the House, staff from the House and Senate have been meeting to iron out differences between the two bills — a sort of pre-conference. Roll Call ($) reports rumors that Reid and House Speaker Nancy Pelosi (D-CA) have worked out a plan to use the staff work in creating a unified bill and have each house pass the new legislation. Because the new legislation would be identical, there would be no need for a conference, and upon passage, the bill could be sent directly to the president for his signature.

This rumor has made groups monitoring the legislation very nervous. There are numerous technical issues that were different between the Senate and House bills. Additionally, there are at least two major issues that need to be resolved. One issue deals with bundling of campaign contributions and the other with slowing down the revolving door. The House bill requires registered lobbyists to disclose their bundled campaign contributions, but the Senate bill does not. The Senate bill requires a two-year cooling off period before legislators and key staff can lobby Congress, but the House leaves it at the current one-year cooling off period.

On July 17, reform groups wrote a letter to Reid and Pelosi expressing concern that the legislation will be further watered down, reducing the importance of the reforms. In particular, the groups said any effort to gut the bundling provisions by dropping a requirement for lobbyists to report bundled campaign contributions as part of lobby disclosure, and simply require candidates and political committees to report to the Federal Election Commission, is not productive. It is not clear what new information this would produce, and the reform groups said it would result in a "complicated, time-consuming and ineffectual approach that is in fundamental conflict with the goals and purposes of the lobbying disclosure reforms."

Some Republicans have already started to complain about this strategy, arguing that bypassing a conference would be cause for trying to slow down the legislation. Senate Minority Leader Mitch McConnell (R-KY) said in a July 20 news conference that he prefers the conference committee process because it will give the minority party more

influence over the content of the final bill. However, he said he has not been able to convince DeMint to change his position, and will not attempt to block the identical bill strategy, saying "I'd rather have the Republicans at the table than not. But I do think it's time to act." For his part, Reid has said that the Senate will not leave for recess until the lobbying reform legislation is addressed.

New Executive Order on Iraq Expands Problems for Charities

President Bush issued an executive order on July 16 that expands the government's authority to block the U.S.-based financial assets of individuals or groups in Iraq beyond those it designates as supporters of terrorism, to include those who act, or assist those who act, against peace and stability in Iraq. The order, titled Blocking Property of Certain Persons Who Threaten Stabilization Efforts in Iraq, directs the U.S. Treasury Department to freeze assets of those who impede "efforts to promote economic reconstruction and political reform in Iraq or to provide humanitarian assistance to the Iraqi people." Experts both in and out of the charitable sector have expressed concern about the potential impact on civil liberties and provision of aid in the region. As the *Washington Post* warns, "Be careful what you say and whom you help -- especially when it comes to the Iraq war and the Iraqi government."

For years, charities have protested the lack of clear standards and due process in Executive Order 13224, signed by Bush in 2001. It prohibits the donation of money or humanitarian articles, such as food, to people and groups the Department of Treasury designates as being associated with terrorists and terrorist organizations. The new executive order (E.O.) raises many of the same issues but could have an even broader impact on charities operating in Iraq, since assets can be seized without any finding of a link to terrorism. All that is required is that Treasury, in consultation with the Departments of State and Defense, finds that any individual or group "committed, or to pose a significant risk of committing, an act or acts of violence that have the purpose or effect of: (A) threatening the peace or stability of Iraq or the Government of Iraq; or (B) undermining efforts to promote economic reconstruction and political reform in Iraq or to provide humanitarian assistance to the Iraqi people."

No clear standards are outlined to define what criteria will be used to determine when an entity poses a significant risk or what constitutes a threat to the peace or security of the Iraqi government. Ken Mayer, a University of Wisconsin expert on executive orders, told the blog TPMMuckraker.com that a threat to the stability of Iraq "could be anything. Think of the possibilities: it could be charities that send a small amount of money (to groups linked to) the insurgency, or it could be the government of Iran that has assets in the U.S...."

The E.O. also allows assets to be frozen without notice. Bruce Fein, a Justice Department official in the Reagan administration, told TPMMuckraker, "I've never seen anything so

broad that it expands beyond terrorism, beyond seeking to use violence or the threat of violence to cower or intimidate a population. This covers stabilization in Iraq. . . . And it goes beyond even attempting violence, to cover those who pose 'a significant risk' of violence. Suppose Congress passed a law saying you've committed a crime if there's significant risk that you might commit a crime."

The E.O. prohibits charitable donations to any group listed under its authority. No listings were included in the E.O. when it was published, but a Treasury spokesperson said the department is in the process of making its list. Any person or organization that aids someone else whose assets have been blocked, knowingly or not, will be subject to being listed as well.

Michael German, the ACLU's chief national security lawyer, was also quoted in a TPMMuckraker blog post, citing the possibility of "a chilling effect on humanitarian donations in Iraq . . . a lot of these provisions where charities are being demonized, to a certain extent, would cause a chilling effect, and that's what's so counterproductive with this type of policy."

FEC Will Draft Rule Allowing Issue Advocacy Broadcasts

Following the June U.S. Supreme Court ruling in *Federal Election Commission vs. Wisconsin Right to Life, Inc.*, which found the federal electioneering communications ban unconstitutional when applied to genuine issue ads, there has been a fast-paced effort to tie up loose ends in related cases and set the stage for the 2008 election. The Federal Election Commission (FEC) announced that it will issue a proposed rule in August to incorporate the decision into its regulations. In two related court cases, the FEC conceded that certain ads in question were genuine issue ads, including one that was critical of a senator's position on a bill. The "electioneering communications" provision of the Bipartisan Campaign Reform Act of 2002 (BCRA) prohibits corporations, including nonprofits, from paying for broadcasts that refer to a candidate for federal office within 30 days of a primary and 60 days of a general election.

FEC Rulemaking

The next major step in protecting grassroots lobbying communications is establishing a rule in FEC regulations, rather than requiring each nonprofit to guess at whether its broadcast qualifies for the exemption under the Supreme Court's ruling. On July 18, Wisconsin Right to Life (WRTL) lawyer James Bopp filed a petition at the FEC on behalf of the James Madison Center for Free Speech asking the FEC to write the definition of protected issue ads into its rules using the Court's language. Bopp said, "Promulgating such a rule should be neither complex nor time-consuming because the Commission should simply adopt the Court's own statement of the test for communications that are subject to the 'electioneering communication' prohibition . . ." The petition also asks for safe harbor examples. Bopp commented, "Groups should not have to hire a lawyer and

go to court to get government permission to engage in speech that the Supreme Court has already held to be protected by the First Amendment."

The same day, the FEC announced it will work on a rulemaking to implement the Supreme Court's decision. The FEC press release said the agency plans to issue a proposed regulation in August, request comments in September and hold a public hearing in October. A vote on a final rule is set for the end of November. FEC Chairman Robert Lenhard said, "We believe it is critical to have a clear rule in place in time for the Presidential primaries and caucuses in early 2008." Because of the early presidential primaries, the first 30-day blackout period will begin in December and will occur during times in 2008 while Congress is considering legislation.

Resolving Related Litigation: Criticism of Officeholder's Policy Position Allowed

In a related case, the Christian Civic League of Maine (CCL) settled its 2006 as-applied challenge when the FEC joined its motion asking the D.C. district court to rule in its favor. In 2006, the court denied CCL's request for a preliminary injunction barring application of the electioneering communications rule to its grassroots lobbying ads. The ads went further than those in the *WRTL* case because they urged people in Maine to contact Sens. Olympia Snowe (R-ME) and Susan Collins (R-ME) and ask them to change their position on the Marriage Protection Amendment. This difference is significant because it sets a broader framework for defining genuine issue ads that are exempt from the electioneering communications ban. As a result, an ad that states the position of the officeholder/candidate on an issue and either criticizes or praises his or her position is recognized as protected issue advocacy.

WRTL's 2006 Challenge Settled

On July 12, WRTL asked for summary judgment briefing schedule for a 2006 ad about the Child Custody Protection Act in a challenge that was not specifically resolved in the Supreme Court case. In 2006, the FEC argued the district court could not rule on the ad without more discovery proceedings allowing the commission to get background information about WRTL's ad campaign. The Supreme Court ruling said such extensive discovery is too burdensome and is no longer allowed. WRTL also asked the court to block Sen. John McCain ☼ (R-AZ) and other members of Congress from intervening in the case any further. According to the motion, McCain and others could no longer assert that they would be injured if similar ads were to be broadcast, so they had no standing under Article III of the U.S. Constitution and must be removed from the case. Bopp stated, "Allowing the rich campaign finance 'reform' gang to pile on in cases where nonprofit citizen groups are trying to vindicate their liberties is wrong, unconstitutional, and inconsistent with the Supreme Court's mandate as to how these cases are to be conducted."

On July 18, the FEC filed a joint motion along with WRTL and the interveners, McCain

et al., asking the court to rule in favor of WRTL. The FEC and the congressional reformers acknowledged that WRTL's ad is constitutionally protected as a genuine issue ad.

Trial Testing Humanitarian Aid Standards Begins

The jury has been sworn in for the criminal trial of the Holy Land Foundation (HLF) and five of its leaders, who are charged with indirectly aiding Hamas by providing charitable aid to grassroots organizations in the West Bank and Gaza. The case is focusing public attention on two issues important to the charitable sector. First, some of the secret evidence used to shut down HLF and freeze its assets in 2001 will come to light, and its reliability and veracity will be challenged. Secondly, the case raises the question of whether it is a crime to provide humanitarian aid through organizations that are not designated as supporters of terrorism. The trial in the U.S. District Court in Dallas, TX, is expected to take three to five months.

The prosecution argues that HLF leaders knew the local groups they were working with to deliver aid were controlled by Hamas, a designated terrorist organization. But defense attorneys argue that it was legal to work with these groups, and at least one, Al Razi Hospital, received funds from the U.S. Agency for International Development during the same time period.

HLF was shut down by the Department of Treasury in late 2001 when it was designated as a supporter of terrorism under the U.S. Patriot Act. The group challenged the designation but lost in a process that used secret evidence and did not allow the group to present the court with evidence on its own behalf. (For details, see the March 2006 OMB Watch report *Muslim Charities and the War on Terror*.) In 2004, HLF was charged in a 42-count indictment, which alleges HLF gave over $12 million to local zakat committees controlled by Hamas and gave priority aid to families of suicide bombers. ("Zakat" is an Islamic concept of tithing or giving of alms. Muslims are obligated to give 2.5 percent of their wealth when their wealth is above a specified level.) The charges were announced on the same day HLF asked the Department of Justice Inspector General to investigate Federal Bureau of Investigation (FBI) use of Israeli intelligence reports that an independent expert found was riddled with translation errors.

Pre-trial proceedings in the case have unearthed troubling problems with evidence. In February, the *Los Angeles Times* reported that declassified government documents show summaries of surveillance of Holy Land's former executive director erroneously claim he made explicit anti-Semitic comments. However, none of the quotes included in the summary were in the 13-page transcript of the conversation. Under the federal Classified Information Procedures Act, the defense attorneys are prohibited from sharing the material with their clients and thus unable to prove that the statements were never said or misunderstood. In March, the trial judge denied a defense request to declassify additional pages of FBI evidence so they could look for other such discrepancies. The

defense attorneys have said they only have summaries for about ten percent of ten years worth of surveillance.

In June, the prosecution took the unusual step of publishing a list of over 300 unindicted co-conspirators in the case, including established Muslim organizations such as the Islamic Society of North America and the Council on American Islamic Relations (CAIR). In a July 23 *Los Angeles Times* story, Ibrahim Hooper of CAIR called the move "McCarthyite tactics" and an "attempt to marginalize and disenfranchise mainstream Muslim groups." The law does not allow unindicted co-conspirators to challenge their designation.

Jury selection in the trial took one week. Three potential jurors were dismissed because they said they feared retaliation from Hamas if there is a conviction. The prosecution asked the judge to cut a juror who said she might have problem convicting the defendants as supporters of terrorism if the support was humanitarian aid. The prosecution is arguing that even though the zakat committees were not designated as supporters of terrorism, the defendants knew or should have known that they had connections to Hamas, and that the aid made it possible for Hamas to spend funds on terrorist activities. If the government's position prevails, it will create a new, expanded definition of what constitutes illegal support that could leave many charities guessing about what groups they can and cannot work with. Given the drastic sanctions involved, and the possibility of criminal charges, many charities may pull back from providing humanitarian aid in conflict areas such as the Middle East.

While HLF has strong supporters, such as Hungry for Justice website, and strong detractors, such as the CounterTerrorism Blog, the central question for charities is not the specific facts of the HLF case. Instead, the question is whether humanitarian aid should be blocked because one or more persons involved in some stage of aid delivery has ties to a designated terrorist group.

Bush's Regulatory Changes Set to Go into Effect

As of today, July 24, federal agencies are to be in full compliance with all the provisions of Executive Order 13422 (E.O. 13422), which amends the regulatory process for agencies, and the *Final Bulletin for Agency Good Guidance Practices*. Both documents were issued Jan. 18 and work in concert to bring significant changes to the way agencies develop and enforce public protections.

President George W. Bush issued the E.O. to amend a Clinton-era executive order in effect since 1993. The Bush E.O.:

- shifts the criterion for promulgating regulations from the identification of a problem like public health or environmental protection to the identification of "...the specific market failure (such as externalities, market power, lack of

information)...that warrant new agency action";
- makes the agencies' Regulatory Policy Officer (RPO) a presidential appointment and gives that person the approval authority for any rulemaking commencement or inclusion of any rulemaking in the Regulatory Plan unless specifically authorized by the agency head;
- requires guidance documents to go through the same OMB review process as proposed regulations before agencies can issue them;
- requires "significant" guidance documents (those that are estimated to have at least a $100 million effect on the economy, among other criteria) to go through the same OMB review process as "significant" regulations; and
- requires each agency to estimate the "combined aggregate costs and benefits of all its regulations planned for that calendar year to assist with the identification of priorities," which will be overseen by the RPO.

Agencies were required to designate their RPOs by March 19. In late July, OMB released a list of RPOs for each agency. Of the 29 on the list, 27 have been confirmed by the Senate in their agency roles but not in their role as RPOs. The remaining two are political appointees who did not require any Senate confirmation.

The White House Office of Management and Budget (OMB) issued the good guidance bulletin the same day to provide directions to agencies as they develop and issue guidance documents. Agencies issue guidance documents in order to clarify regulatory obligations to industry, explain complex technical issues or otherwise offer clarification or guidance on agency policies. Agencies produce thousands of guidance documents every year.

The *Final Bulletin* requires internal review of significant guidance documents by senior agency officials as well as public notice-and-comment on guidance documents deemed "economically significant." These guidance documents are those judged to exceed the $100 million economic impact threshold stated in the E.O.

The OMB office with review authority is the Office of Information and Regulatory Affairs (OIRA). OIRA may review any guidance document it wishes to review. The E.O. and the *Final Bulletin* require OIRA to review significant guidance documents and gives the administrator the authority to define which documents are "significant."

These regulatory changes are controversial for more reasons than their timing, coming in the seventh year of the Bush presidency. OMB Watch issued a report July 24 summarizing the potential impacts of these changes on agencies' ability to issue regulations protecting public health, workplace safety, the environment and civil rights. (We issued a more comprehensive report in March entitled *A Failure to Govern.*) We believe the changes have real potential to further delay the issuance of regulations, distort the balance of power between Congress and the executive branch, and remove considerable discretion from agencies to implement legislative mandates to respond to

public needs.

Congress has also expressed dismay at the potential harm these changes might inflict. In a series of hearings (see the links on the right), Congress heard from supporters of these amendments — the U.S. Chamber of Commerce, for example — who claimed the changes represent good government and help reign in federal agencies. Congress also heard from a range of advocacy groups (including OMB Watch), former government officials and administrative law experts who said these changes may be unconstitutional, usurp both agency and congressional responsibilities, add more delay to an ossified process and further centralize authority in the executive branch.

On June 28, the House passed the Financial Services and General Government Appropriations Act, FY 2008 (H.R. 2829). The bill contains an amendment that prevents the White House from expending any funds in implementing the E.O. and the *Final Bulletin*.

The Senate also considered defunding language for its version of the FY 2008 appropriations bill. Language that would have prevented the use of funds in implementing both the E.O. and the *Final Bulletin* was included when an appropriations subcommittee considered the bill. However, the language was later removed when it reached the full Appropriations Committee.

When the House and Senate meet in conference to resolve differences in the two appropriations bills, the House language preventing implementation of the E.O. and the *Final Bulletin* will be addressed. Bush has threatened a veto over other spending issues in the bill.

Amidst Increased Scrutiny, FDA Wants to Shut Testing Labs

Amidst increased scrutiny by the public and Congress of the problems with food imports and instances of bacterial outbreaks in the domestic food supply, the U.S. Food and Drug Administration (FDA) plans to close 7 of 13 laboratories that test for food safety.

Testifying July 17 before the House Energy and Commerce Committee's subcommittee on Oversight and Investigations, FDA commissioner Andrew C. von Eschenbach said that the closings will enhance FDA's capabilities. "Consolidating our work into six laboratories whose capacity will meet and even exceed the capacity of FDA's 13 existing field laboratories will strengthen and increase ORA's [Office of Regulatory Affairs] analytical capabilities to meet the challenges of the 21st Century," he wrote in his formal testimony.

But an investigation by the subcommittee's staff this year and other witnesses appearing before the subcommittee brought that conclusion into question. According to findings presented to the subcommittee by David Nelson, the subcommittee staff's lead

investigator, the restructuring proposal and food safety approaches have several flaws. His testimony countered von Eschenbach's statements about the strides FDA has made in food safety protections. Nelson found:

- that FDA lacks sufficient resources and authority to adequately protect food safety;
- that FDA's proposal to change the structure of the labs exacerbates the food safety problem; and
- that "FDA's current regulatory approach, that relies on voluntary guidelines for most domestic and imported foods, appears inadequate in responding to the changing food industry."

During the investigation, subcommittee staff visited ports of entry and FDA labs and interviewed field personnel involved in food safety inspections. According to these interviews, FDA allows private labs, over which it has no oversight authority, to do food safety testing of imports. FDA allows food suspected of being unsafe to be returned to importers, and the importers have the food tested by private labs.

One FDA deputy lab director described the work of the private labs as "spooky" and "scary." Another FDA official concurred with this conclusion saying the labs are not adequately performing because they are driven by financial considerations and not safety considerations.

According to Nelson's testimony, FDA has failed to provide any analysis justifying the "radical reorganization." Labs in Detroit, San Francisco, Denver, Kansas City, San Juan, Puerto Rico, Philadelphia and Winchester, MA are proposed for closing. At a time when food safety issues have created a public health "crisis," the rationale for the closings seems to rest on little other than expected retirements and vacancies.

House Energy and Commerce Committee chairman John Dingell (D-MI) has stopped the labs from closing pending a report from the Government Accountability Office (GAO) analyzing the agency's reorganizational plans, according to a *New York Times* article. Additionally, the Senate and House Appropriations Committees passed Agriculture spending bills July 19 that prohibit FDA from implementing its plans.

Additional witnesses testified before the subcommittee about other flaws in the food safety net. For example, Caroline Smith DeWaal, food safety director at the Center for Science in the Public Interest, testified that FDA is poorly funded and jurisdiction over food safety is split primarily between FDA and the Department of Agriculture (USDA).

She also called for Congress to dramatically increase FDA's funding, update food safety laws which are over a century old, and create one food safety agency to overcome the jurisdictional splits among FDA, USDA and other agencies with some food safety responsibilities.

Also testifying was William K. Hubbard, former FDA associate commissioner who retired in 2005. He detailed the lack of funds and lost personnel the agency has experienced in recent years:

...the food program, in particular, has undergone steady budget cuts: the staff of FDA's headquarters food program has been reduced from almost a 1000 scientists to fewer than 800 in just five years; and FDA's field force, which includes its inspectors and import staff, has dropped during that period from over 4000 to about 3300 today. Of course, this is at a time in which the problems are growing and food imports are skyrocketing. The current budget request for Fiscal Year 2008 is a good example of the recent trends. Although the official budget request states that it includes an "additional" $10 million for food safety, the food program's inflation needs are not covered by the request, so the practical effect of that budget is a 3% (or $14 million) decrease (even with the $10 million "increase").

The subcommittee heard from nine witnesses in all, several of whom are or were FDA district officials. There are several legislative proposals pending in Congress to address the problems at FDA in light of the rapid increase in food imports and the fractured jurisdictional responsibilities among federal agencies.

White House Delays Whale Protection Rule

The White House is currently delaying the completion of a final rule intended to protect a critically endangered whale species. Critics are concerned the Bush administration is giving special access to business interests and overemphasizing economic considerations in its review of the rule. The delay of the whale protection rule is indicative of a larger problem in the White House regulatory review process.

The North Atlantic right whale is a large species native to the waters off the coast of America's eastern seaboard. According to the National Oceanic and Atmospheric Administration (NOAA), "The population is believed to be at or less than 300 individuals, making it one of the most critically endangered large whale species in the world." The species is protected under both the Endangered Species Act and the Marine Mammal Protection Act.

Although the species has benefited from federal protections for years, it is still having difficulty recovering. Human activity is the primary impediment to species recovery. Collisions between whales and shipping vessels are a particularly serious problem. According to NOAA, "One of the greatest known causes of deaths of North Atlantic right whales from human activities is ship strikes."

In response, NOAA began working in 1999 on a federal rule to limit the speed of large shipping vessels traveling along the eastern seaboard. The speed limits would vary based

on geographic location and season.

NOAA submitted a draft proposed rule to the White House Office of Information and Regulatory Affairs (OIRA) in March 2006. In June 2006, NOAA published the proposed rule in the *Federal Register* and opened the rule for a public comment period which lasted until October.

On Feb. 20, 2007, NOAA submitted a draft final rule to OIRA. Under Executive Order 12866, Regulatory Planning and Review, agencies are required to submit significant rules to the White House in order to give OIRA an opportunity to review and edit the rule. Agencies must submit the rule at least twice — once as a draft proposed rule and once as a draft final rule.

E.O. 12866 also prescribes a time limit for the OIRA review period. OIRA is to complete its review within 90 days of receiving the rule from the agency. In consultation with the agency, OIRA may extend the review period once for 30 days.

Because NOAA submitted the whale protection rule on Feb. 20, the OIRA review period has expired, even after use of its 30-day extension. Neither OIRA nor NOAA has given word as to when the review period will end. Although OIRA is to consult with agencies during the review process, NOAA has been kept in the dark as to the status of the rule, according to Public Employees for Environmental Responsibility (PEER), a public interest organization closely following the issue.

Delay of agency rules during the OIRA review process is not uncommon — nine percent of rules currently under review have exceeded OIRA's time limit. As of July 20, OIRA was reviewing 124 rules, according to RegInfo.gov. Of those 124 rules, OIRA has extended the review period of 13. Ten of those rules, including the whale protection rule, have exceeded the maximum 120-day review period. One additional rule has surpassed the initial 90-day window and has not officially had its review period extended. The most egregious case of delay is an EPA proposed rule on radiation exposure. The rule was submitted to OIRA in October 2005.

The exact nature of the OIRA review is also unclear because of a lack of transparency in the review process. RegInfo.gov, the federal government's regulatory review database, lists only dates of submission and identifies the results of OIRA's review in one of three ways: "consistent without change," "consistent with change," or "withdrawn" by the agency.

During the review period of the whale protection rule, OIRA has consulted with outside interests groups at least once. On March 28, officials from OIRA and NOAA met with representatives from the International Fund for Animal Welfare, a nonprofit organization dedicated to animal rights issues.

The World Shipping Council has also lobbied OIRA on the whale protection rule. In a

May 3 letter to OIRA Administrator Susan Dudley, the World Shipping Council expressed opposition to the rule citing economic costs and questioning the validity of NOAA's research. The World Shipping Council represents some domestic but mostly foreign shippers.

PEER is concerned about the influence of industry during the review. New England PEER Director Kyla Bennett said in a statement, "Foreign shippers want no environmental restrictions on how they use and sometimes abuse American waters but our government is supposed to be protecting our national interests, which include our endangered wildlife." She added, "The Bush administration should listen to our own experts rather than corporate lobbyists representing largely foreign interests."

In another unusual development, OIRA has involved the White House Council of Economic Advisors (CEA) in reviewing the rule, according to PEER. NOAA has already conducted extensive economic analysis in order to determine the rule's impact on the shipping industry and small businesses. NOAA has concluded the biological benefits of the rule far exceed any economic impact levied against shipping interests.

It is rare for the OIRA administrator to seek consultation with the Council of Economic Advisors on regulations. Rick Melberth, Director of Federal Regulatory Policy for OMB Watch, called it "a case example of OIRA overemphasizing economic considerations and protecting special interests instead of public need."

Questions, Concerns Surround Start of Nussle Confirmation Hearings

On June 19, Office of Management and Budget (OMB) Director Rob Portman announced his resignation, effective in August. The same day, President Bush nominated former House Budget Committee chairman Jim Nussle (R-IA) to be the next OMB director. Today, July 24, the Senate Homeland Security and Governmental Affairs Committee (HSGAC) held the first confirmation hearing for Nussle; on July 26, the Senate Budget Committee, which also has jurisdiction over the nomination, will hold its own hearings.

Before the hearing, Sen. Barack Obama ☼ (D-IL) submitted a statement for the record with additional topic areas he sought to have Nussle address concerning his nomination, including the next executive order on regulatory oversight, significant delays in release of Census Bureau reports on government spending, the administration's (and Nussle's) confrontational style, particularly related to the FY 08 appropriations bills, and important tax policy questions. Overall, Obama advised to move cautiously with this nomination.

Members of the HSGAC panel were generally deferential toward Nussle at today's hearing. The only aggressive questioning Nussle faced was from freshman Sen. Claire McCaskill ☼ (D-MO), on the subject of executive earmarks. Nussle fully admitted he

spent time while in the House pursuing and successfully winning earmarks for his district, but also agreed with McCaskill that the real problem with earmarking was not the process itself, but the secrecy surrounding the process and lack of information on who makes earmark requests. Nussle pledged to continue to work to bring transparency and disclosure of information to the earmarking process.

At the conclusion of the hearing, Committee Chairman Joe Lieberman (I-CT) questioned Nussle closely about whether Nussle believed tax cuts pay for themselves — a position Nussle said he had been quoted in a "heat of the argument" moment — and why he advocated one-sided PAYGO. Nussle said PAYGO rules that apply to both spending and tax cuts miss the focus of the country's fiscal problem — one he believed to be a spending problem and not a revenue problem. Based on the tenor and substance of today's hearing, it is likely the committee will report Nussle favorably when it reconvenes later this week.

Most of the focus during the Budget Committee hearing on Thursday will be on Nussle himself, his experience as former chair of the House Budget Committee and his substantial record on budget policy and procedural issues. But the hearings could prove contentious, as some members, such as Committee chair Kent Conrad (D-ND), may use the hearings to challenge the administration's approach to negotiations over the FY 2008 appropriations.

Chief among the predominant issues to watch for during the second Nussle hearing will be:

The Nussle Record I — Performance as House Budget Committee chair: As a Budget Committee chairman, Nussle failed to usher through a budget resolution three out of the six years of his tenure. In 2006, his final year chairing the committee, Congress failed entirely to adopt a budget. Strikingly, during his time as committee chair, Nussle's party was in control of both houses of Congress and the White House. The burden will be on Nussle to demonstrate how, with Democrats now running Congress, his approach to completing budgets will reflect the new political reality that confronts him and what plans he has to be more effective at producing a workable budget with Congress.

The Nussle Record II — Apostle of Tax Cuts, not Fiscal Restraint: Over his six-year tenure as Budget Committee chair, Nussle saw the national debt increase from about $5.5 trillion to nearly $9 trillion, an increase of roughly 64 percent — suggesting a less-than-dedicated focus on fiscal restraint. Nussle was cheerleader in the House for the administration's massive tax cuts in 2001, 2003, 2004 and 2005, helping to usher those bills through that chamber. He went so far as to declare in 2004,"Tax cuts don't need to be paid for [with offsets] - they pay for themselves" — a degree of policy orthodoxy since repudiated by the Bush administration. Nussle should be questioned closely about his adherence to this inaccurate belief especially in light of a recent nonpartisan Congressional Budget Office report that found the 2001 and 2003 tax cuts have cost $211

billion to the Treasury in 2007 alone — a far cry from paying for themselves. Nussle's strict adherence to tax cuts at any cost and mistaken belief that they will reap more revenues for the Treasury than they cost need to be carefully examined during the hearings.

The FY 2008 Budget Process: After six years of stewardship over steady, significant annual federal budget spending increases, the administration has demonstrated a sudden interest in espousing the rhetoric of fiscal restraint — pushing hard to hold to the $932 billion limit the president has set on discretionary spending by issuing formal veto threats for the first time ever on "excessive" spending bills. Should the president carry through on these threats, the FY 2008 budget could be in jeopardy; a government shutdown — at least for parts of government — is possible this fall if no accommodation with Congress is made.

At the Budget Committee confirmation hearing on Thursday, Nussle will almost certainly be questioned about whether President Bush's FY 2008 discretionary spending limits are "non-negotiable" and how he would break the current budget stalemate between the White House and Congress in order to help enact the appropriations bills on time.

To a certain extent, some of the antagonism that Nussle may encounter from Congress stems from the sense among Democrats such as Sen. Kent Conrad (D-ND) that Nussle was "an intense partisan more given to confrontation than cooperation" during his time as House Budget chairman. This certainly raises questions of whether he can negotiate in a constructive manner the difficult issues involved in the FY 2008 budget in a difficult environment. But it may also be more about the administration's policies and approach to the new Democratic controlled Congress than about Nussle himself.

It is both his previous aggressive record and style, plus the hard line being taken by the administration, that will likely be key issues as the Senate considers his confirmation as director of OMB. Conrad reported rumors of a "hold" in the Senate regarding his confirmation, but said he had no further information. In the end, the confirmation process will likely raise a welter of federal budget issues, but none sufficiently damaging to Nussle to imperil prospects for Senate approval of his nomination.

Sustaining Presidential Vetoes May Become More Difficult

As Congress continues making progress on appropriations legislation, and as details of its spending priorities are revealed in each of the twelve FY 2008 appropriations bills, signs of waning enthusiasm for sustaining presidential vetoes are appearing within a group of 147 House Republicans. While this group vowed to support any presidential veto of appropriations bills, eight of the appropriations bills passed thus far by the House have garnered significant bipartisan support, defraying the solidarity of that coalition.

In May, 147 Republican representatives pledged to vote to sustain presidential vetoes of

spending bills that exceeded the president's initial budget request. So far, 62 of those signatories have voted for an appropriations bill the president has threatened to veto. Of the eight bills approved by the House, four have been met with veto threats from the president, and four representatives out of the 147 promised veto-sustainers have voted for each of those threatened bills, while three voted for three out of four bills. Although a vote in favor of a given bill does not preclude a vote to sustain a veto, it is consistent with support of the substance of the bill and makes it more difficult for the legislator to change his or her vote later in the process.

The Senate has also made progress on the appropriations bills, with its Appropriations Committee having passed 11 of the 12. However, the full Senate has yet to take any action on annual spending legislation.

Despite the veto threats from the White House, Congress has stuck firmly to the budget resolution it passed in May. And although Congress's proposed FY 2008 spending levels are nine percent above those enacted in FY 2007, when those levels are adjusted for inflation and population growth, the next fiscal year's non-defense discretionary spending will be lower than it was in FY 2005.

	House			*Senate*		
	SubCmte	Cmte	Floor	SubCmte	Cmte	Floor
Agriculture	17	18.8		18.7	18.7	
Commerce-Justice-Science	53.6	53.6		54.4	54.4	
Defense	459					
Energy & Water	31.6	31.6	31.6	32.3	32.3	
Financial Services	21.43	21.4	21.4	21.8	21.8	
Homeland Security	36.3	36.3	36.3	37.6	37.6	
Interior & Environment	27.6	27.6	27.6	27.2	27.2	
Labor-HHS-Education	151.5	151.5	151.4	149.2	149.2	
Legislative Branch	3.1	3.1	3.1	4	4	
Military Construction-VA	64.7	64.7	64.7	64.7	64.7	
State-Foreign Operations	34.2	34.2	34.2	34.2	34.2	
Transportation-HUD	50.7	50.7		51.1	51.1	

Numbers are billions of dollars. Green boxes indicate approval. Black boxes next to bill titles are bills which the president has issued a veto threat.

At $151.4 billion, the House **Labor-HHS-Education** appropriations bill is the largest of the non-defense measures. It allocates $10 billion (7.5 percent) more than the president's request and $2.2 billion (1.65 percent) more than the Senate's bill to health, education and worker programs. In addition to the bill's funding level, the president has threatened to veto it because of language regarding female reproductive health. Included in the bill is:

Program/Line Item *(chart in millions)*	**FY 2008 Appropriations**	**Amount Above President's Request**
dislocated worker assistance	1,115	357
job training	1,552	252

community health centers	2,188	200
rural health programs	145	120
Centers for Disease Control to fund terrorism preparedness and response programs	1,589	85
Low Income Home Energy Assistance (LIHEAP)	2,662	880
No Child Left Behind-authorized programs	25,641	975

Representing the largest boost in Veterans Affairs spending since the agency's inception, the **Military Construction-Veterans Affairs** spending bill was overwhelmingly approved by the House on June 15 by a vote of 409-2. The measure is $4 billion more than the president's request, but the president has declined to veto it, issuing instead a demand that Congress find spending offsets in other appropriations bills. Among others, the bill would set spending levels for the following programs:

Program/Line Item *(chart in millions)*	**FY 2008 Appropriations**	**Amount Above President's Request**
programs to treat post-traumatic stress disorder for veterans returning home from the wars in Iraq and Afghanistan	600	600
assistance for homeless veterans	130	23
medical and prosthetic research	480	69
maintenance and renovation of existing medical facilities	4,100	508

In June, the House also approved the FY 2008 **Homeland Security** appropriations bill. Providing $36.3 billion in funding for securing the nation's borders, airspace, Coast Guard and infrastructure, the bill provides over $2 billion more for homeland security than the president's request. Some details of the bill include:

Program/Line Item *(chart in millions)*	**FY 2008 Appropriations**	**Amount Above President's Request**
first responder and port security grants	4,620	700
Transportation Safety Administration	6,640	234
border security	8,900	139

FEMA management	685	17

Republican support in the House for sustaining a spate of vetoes has already begun to waver. By emphasizing spending on human needs, and placing vital social programs above unnecessary discretionary spending cuts, the Democratic leadership has been able to attract strong support from both sides of the aisle to FY 2008 appropriations legislation. In so doing, Congress may be able to eschew attempts by the White House to bully into law insufficient spending levels.

Reauthorization of Children's Health Insurance Program Gains Momentum

On July 19, the Senate Finance Committee approved a proposal to expand coverage of the State Children's Health Insurance Program (SCHIP) to four million additional children who would otherwise not have health insurance. The entire Senate is expected to vote on the proposal this week (July 24-27), while the House is expected to act soon to approve legislation providing insurance for even more children than the Senate's version. The president has threatened to veto the Senate Finance Committee-approved version, even though it cleared the committee with strong bipartisan support, 17-4.

SCHIP, which is administered by the states and relies on a block-grant funding formula, provides health insurance for children in families who earn a low income but do not qualify for assistance under Medicaid. It was created in 1997 on a bipartisan basis and has wide support in both chambers. Its authorization must be renewed before the end of September or the program will expire.

The National Governors Association (NGA) is strongly supportive of a SCHIP authorization, writing numerous letters to the House and Senate, as well as the president — the most recent being sent on July 22. In that letter, the NGA again urged the Congress and president to reauthorize the program and stated they are encouraged by the efforts of the Senate to pass a bipartisan proposal that "increase[s] funding and reflects the general philosophy that state flexibility and options and incentives for states are preferable to mandates."

The draft approved by the Senate Finance Committee — crafted by Sens. Max Baucus (D-MT), Chuck Grassley (R-IA), Jay Rockefeller (D-WV), and Orrin Hatch (R-UT) — would add $35 billion to the program over five years. This extra funding would enable states to provide coverage to four million more children, according to the Congressional Budget Office (CBO). The Center on Budget and Policy Priorities has found the vast majority of the four million children who would get insurance under the proposed expansion are already eligible for SCHIP, but, for lack of funding, have not been covered. About nine million American children are currently believed to be uninsured.

President Bush has threatened to veto the Senate proposal, which exceeds his $5 billion request by $30 billion. CBO has estimated that it would take $13.4 billion just to maintain the level of coverage currently provided, so the president's request represents a real cut in services. For context, the entire FY 2008 budget stands at $2.9 trillion, more than 400 times the size of the Senate proposal.

The House is considering a larger expansion than the Senate. Although a proposal has not yet been approved, media reports show the House will most likely consider a $50 billion expansion. Under the expected proposal, the House would find savings to pay for their proposal in the Medicare Advantage program, a privatization program that has been shown to cost 12 percent more than regular Medicare. Both the Senate and the House would pay for most of the expanded cost of the SCHIP reauthorization with a 61-cent increase in the federal cigarette tax.

Some lawmakers oppose the increase, arguing that the program covers too many adults rather than children, and that an expansion will encourage people who already have private insurance to sign up for SCHIP. An analysis by the Center on Budget and Policy Priorities acknowledges that about a third of the new enrollees will have had private insurance, but all expansions of government-run health insurance have this "crowd-out" effect, and one-third of enrollees is a relatively low percentage compared to previous expansions. For comparison, under a Bush proposal to subsidize private health insurance, 77 percent of the benefits would go to people who already have health insurance. Furthermore, the bill approved by the Senate Finance Committee would shift non-pregnant, childless adults on SCHIP to Medicaid and prevent states from using SCHIP funds to sign up more non-pregnant, childless adults.

The House hopes to move its SCHIP legislation out of committee to the floor the week of July 30, while the Senate is expected to begin debating its reauthorization bill on the floor this week. It is possible both chambers will pass their reauthorization proposals before the start of the August recess.

Another Attempt at Ending IRS Privatization Program Moves Forward

Both the House and Senate have taken important steps toward ending the wasteful and risky Internal Revenue Service (IRS) private tax collection program. The House Ways and Means Committee approved a bill (H.R. 3056) that would repeal the program, and the Senate Appropriations Committee cleared a bill (H.R. 2829) that would tightly limit the funding available at the IRS to administer the program.

Both committees reached approval by slim margins. H.R. 3056, the Ways and Means bill, was approved on a party line by 23-18, and H.R. 2829, the bill with spending restrictions, by 15-14. The White House has threatened to veto H.R. 2829, but on grounds not related to the debt collection program. It has not issued a statement

regarding H.R. 3056.

The private tax collection program lets private companies track down taxpayers who have not paid a small amount of outstanding taxes (see an OMB Watch summary of the program). If the IRS did the same work in-house, it could bring in nearly three times as much money as the private debt collectors. Additionally, letting profit-motivated companies handle sensitive tax matters has raised concerns both inside and out of Congress regarding privacy and taxpayer rights.

H.R. 3056 contains nearly the same language regarding the private collection program as H.R. 695, a bill co-sponsored by Reps. Steven Rothman (D-NJ) and Chris Van Hollen (D-MD). The primary difference between the two bills is that H.R. 3056 would not abrogate contracts that have already been issued to private debt collectors. This difference may dampen the opposition to the legislation from companies who have already won contracts from the government, as they would no longer stand to lose money if the contracts were not left intact.

During the debate over H.R. 3056, defenders of the debt collection program argued that using private debt collectors is a way to avoid the opportunity cost of pursuing small tax debts. The IRS, program supporters claim, does not have enough funding to pursue the cases that have been handed over the private agencies, and even if more funding were given to IRS, it would use it to pursue cases yielding a higher rate of return. However, as several legislators pointed out, the IRS has already spent $71 million to set up and administer the program. If spent elsewhere, this money could have brought in $1.4 billion in two years, while the program has only brought in $20 million over that same time period.

Ending the program would cost $1.1 billion over 10 years, according to the Congressional Budget Office. H.R. 3056 offsets this cost by increasing taxes on people who have renounced their citizenship, as well as reinstating and increasing certain penalties and interest regarding taxes (see a full list of offsets). The bill also contains a few other minor changes in tax law, including a one-year delay on a withholding requirement for government goods and services and language ensuring residents of the Virgin Islands are entitled to the same taxpayer rights as residents of the United States.

No plans have yet been made for either bill to be considered by the full House or Senate. The House has approved its companion to the Senate's draft of H.R. 2829, though language that would have limited funding for the debt collection program was removed on a point of order challenge on the floor. A Senate companion to H.R. 695 — S. 335 — has gained 21 co-sponsors but has not yet been considered by the Senate Finance Committee. While it is still unclear which mechanism will be used to end the program, there has been significant momentum to find a workable solution.

OMB Releases Flawed Mid-Session Budget Review

On July 11, the Office of Management and Budget (OMB) released its annual Mid-Session Review, which contains updated estimates of the budget deficit, receipts, outlays and budget authority for fiscal years 2007 through 2012. While the administration trumpeted the decrease in the projected deficit, several aspects of the review cast doubt on the accuracy of these claims. In addition, the projections for years 2008-2012 were less noted and far more sobering.

The Mid-Session Review's narrowed budget deficit projection this year follows a pattern repeated by the administration, predating its promise early in the 2004 presidential campaign to cut the budget deficit in half. Each year since then, the president's budget proposal has included an inflated deficit projection, to establish a benchmark against which revised projections were calculated to make it look like the deficit was being reduced, or reduced by more than had been expected.

To see this pattern clearly established, look at OMB Watch's assessments over last few years of the Mid-Session Review:

- In 2005, we wrote that the Review "predicted an improvement in the current fiscal year 2005 (FY05) deficit by $94 billion from its February projections... Most independent analysts, however, believe the projected drop in this year's deficit is a result of tax provisions causing a one-time surge in revenue, as well as OMB's continued omission of certain costs in its deficit calculations.

- The refrain was similar in 2006: The Bush administration announced last week its revised figure for this year's budget deficit: $445 billion. This, or so the spin goes, is good news, because the original forecast was even higher -- $521 billion. But outside budget experts had warned that the forecast was inflated, which tarnishes any celebration of the new number.

- Overall, according to a 2006 Bloomberg report: "Bush's budget-forecast misses in the past six years averaged $111.5 billion, according to figures from the White House Office of Management and Budget. That ranks him behind the Reagan administration's $98.1 billion average gap, George H.W. Bush's average of $69.9 billion, and about twice the Clinton administration's $58 billion average.

What makes this Mid-Session Review even worse is the administration continues to ignore the deterioration of the country's long-term fiscal health. The OMB review fails to mention the $137 billion *increase* in the deficit over fiscal years 2008-2012. While this is not good news, the figure may, in fact, be optimistic, based as it is on White House assumptions that the Iraq war will cost nothing after 2008 and that the Alternative Minimum Tax (AMT) will neither be patched nor reformed, let alone repealed. The estimated cost for a one-year patch of the AMT is $50 billion, and more comprehensive

reform may cost even more.

Sadly, or perhaps fortunately — for the sake of the reliability of claims relating to the nation's fiscal condition — to say nothing of the credibility of the federal government as a source of information generally, the OMB Mid-Session Review barely garnered attention. It was released quietly by the administration almost two weeks ago, and despite the administration's best efforts to focus attention on the artificial short-term good news, it had difficultly convincing even its former advisors, such as Greg Mankiw, Bush's former chair of the Council of Economic Advisers, that the looming fiscal problems on the horizon could be considered good news.

The budget projections produced over the last few years by the administration have continued to lose credibility as they have been used to further President Bush's political agenda. The release of the Mid-Session Review no longer serves as an important budgetary marker and has little or no effect on the formation on the debate over the federal budget.

FEMA Ignores Toxic Trailers of Hurricane Victims

The Federal Emergency Management Agency (FEMA) turned a blind eye to Katrina victims who became ill while living in FEMA-provided trailers, according to testimony given at a hearing of the House Committee on Oversight and Government Reform on July 19. Trailer tenants and experts described how FEMA, with evidence of toxic levels of formaldehyde in the trailers from construction materials, refused to substantively evaluate the extent of the problem, respond to known instances of formaldehyde poisoning or take adequate precautionary action.

Committee Chair Henry Waxman (D-CA) offered a scorching review of FEMA's inaction: "Senior FEMA officials in Washington didn't want to know what they already knew because they didn't want the moral and legal responsibility to do what they knew had to be done. So they did their best not to know." In a memo reviewing over 5,000 documents subpoenaed from FEMA, committee staff outlined a pattern of agency officials ignoring warnings about hazardous formaldehyde levels in the trailers from field staff and other government agencies such as the U.S. Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention (CDC).

Even after reports of formaldehyde poisoning in March 2006, FEMA refused to test occupied trailers and ignored testing that tenants had conducted independently. The agency implemented a testing program only for unused trailers six months later. The limited program, which indicated the trailers to have enough ventilation to reduce formaldehyde levels below the "level of concern," was explained by FEMA Administrator R. David Paulison as a data quality effort, "to eliminate any effects from human activities that might cause formaldehyde levels to rise."

However, hearing testimony revealed that there are several different "levels of concern" for formaldehyde. FEMA's testing placed the formaldehyde levels in the unoccupied trailers below an Occupational Safety and Health Administration standard, which allows exposure to 0.75 parts per million (ppm) over an eight-hour period. In contrast, both the National Institute for Occupational Safety and Health (NIOSH) and EPA claim that much lower levels of formaldehyde can cause acute health effects. The NIOSH eight-hour standard for formaldehyde exposure is just 0.016 ppm, more than 46 times lower than the standard used by FEMA.

Medical personnel also reported a strong correlation between respiratory infections and living in the FEMA trailers. Sierra Club conducted its own investigation and found that 83 percent of the trailers they tested were above 0.10 ppm. This level of formaldehyde, coupled with the long exposure that resulted from the trailers being used as residences, meant that by many health and safety standards, the trailers were and continue to be extremely unhealthy places to live.

It appears FEMA was more worried about protecting itself from possible future litigation than protecting the health of Katrina victims. Messages uncovered by Waxman's subpoena reveal that the agency's Office of General Counsel (OGC) directed FEMA staff not to test formaldehyde levels without OGC's approval, since that, as one staff person explained, would "imply FEMA's ownership of this issue," and FEMA must be "fully prepared to respond to the results."

FEMA is only now testing occupied trailers for air contaminants at levels hazardous to human health. Hopefully, this effort is not too late for the residents still living in 67,000 trailers across the Gulf Coast region.

Energy Task Force Advisors Revealed, Six Years after Meetings

In the long-standing struggle to gain access to details regarding Vice President Dick Cheney's energy task force meetings in 2000 and 2001, the *Washington Post* reported last week some of the many players who influenced the vice president's policy recommendations. An undisclosed former White House official gave the *Post* a list of approximately 300 names, companies and organizations who met with White House staff.

With the release of the task force's May 2001 report urging the adoption of energy policies geared toward the expansion of drilling opportunities and increased oil and gas supplies, public interest groups and the General Accounting Office (now called the Government Accountability Office (GAO)) tried to review the process surrounding the vice president's energy task force, including the substance and logistics of various meetings between the White House and industry representatives. At every turn, the administration rebuffed their efforts. As previously reported by the *Watcher*, the courts

found that the vice president is not required to release details on whom he or his staff met with, let alone the substance of the meetings.

The *Post*, however, gained access to a few of the details regarding whom Cheney and his staff met with. Documents turned over to the *Post* disclosed a list of oil and gas companies and industry groups that met with White House staff. The list includes executives at approximately 20 oil and gas companies including Exxon Mobil and British Petroleum; electric companies such as Enron, Duke Energy and Constellation Energy Group; and approximately 36 trade associations, such as the American Petroleum Institute and the National Mining Association. It was reported that many of these companies and trade associations submitted detailed policy recommendations to White House officials.

Interestingly, many of the people and companies listed were contributors to the Bush-Cheney 2000 presidential campaign. The *New York Times* reports that those on this list contributed more than $570,000.

The fact that it took a leak six years after the fact to reveal who attended White House meetings in the development of national energy policy is an indication of this administration's disdain towards government openness and accountability. Even nonpartisan, investigative federal agencies like the GAO were prevented from accessing any details regarding the meetings. The Office of the Vice President continues to maintain that White House officials have a right to receive candid and confidential advice, even though meetings of advisory groups, under the Federal Advisory Committee Act, are required to be open with advance public notice.

Baltimore Calls on Congress for More Chemical Security

On July 16, the Baltimore City Council unanimously passed a resolution supporting federal chemical security legislation that would require, when feasible, the use of safer chemicals and technologies.

As the resolution does not create any new security standards for Baltimore nor require any action by chemical companies, it is largely an effort to send a message to Congress about the perceived missed opportunity to make communities safer. By explicitly urging the use of safer and more secure technologies in the manufacture, transport, storage or use of chemicals, the resolution essentially urges Congress to go beyond the compromise legislation passed last year as part the Department of Homeland Security Appropriations Act of 2007.

The program developed by the Department of Homeland Security under those provisions has received criticism for creating the possibility that the program may preempt stronger state and local efforts and for failing to adequately minimize chemical risks by either

requiring or encouraging the use of safer substitute chemicals.

The resolution was introduced by Robert Curran, vice president of the council. Curran reportedly explained the resolution saying, "Here are substitutes that they can use instead of those toxic materials for the folks who work at these plants."

Surgeon General Warning: Manipulated Science

At a July 10 hearing of the House Committee on Oversight and Government Reform, former Bush administration Surgeon General Richard Carmona joined a growing list of officials to disclose the executive branch's political manipulation of science. Carmona's claims that agency science is being distorted for political purposes echoes charges leveled by recent whistleblowers from the Department of the Interior, the U.S. Food and Drug Administration, the U.S. Environmental Protection Agency (EPA) and the National Aeronautics and Space Administration.

Carmona provided examples of repression and manipulation such as "stem cell research, emergency contraception, and sex education." He noted that several reports were prohibited from publication, and he said he was instructed to mention President Bush at least three times in every page of a speech. Carmona asserted that the administration even went so far as to discourage his attendance at a Special Olympics event because of its relationship with a "prominent family" unfriendly toward the current administration, the Kennedys.

Some political pressure is inevitable on a prominent appointee. However, Carmona and former surgeons general C. Everett Koop and David Satcher concurred that the current administration interfered with the surgeon general's office more than previous ones. Koop described the growing pressure in the years since he was surgeon general under President Reagan and questioned why Carmona hadn't been allowed to have more of a role in Hurricane Katrina recovery efforts, given his experience in emergency services.

The Office of the Surgeon General's mission is to educate the American public with "the best scientific information available." As Satcher emphasized in his testimony, "The role of trust and credibility is critical...if that is compromised, then the vital mission of the office is compromised." Adequate resources and independence are vital to fulfill that mission, particularly in the face of conflicting agendas held by other agencies.

Considering the recommendations presented at the hearing, Rep. Henry Waxman ☼ (D-CA) announced plans to introduce the Surgeon General Independence Act to bolster the surgeon general's ability to be "the doctor of the nation, not the doctor of a political party."

The Senate is currently considering the nomination of Dr. James Holsinger to be the new surgeon general. Controversial because of his views on homosexuality, Holsinger may be

more to the ideological leanings of the president but may have trouble getting confirmed.

An Examination of Government Openness

OpenTheGovernment.org and People For the American Way recently released *Government Secrecy: Decisions Without Democracy*, which gives a comprehensive examination of the importance of government transparency and the various legislative and policy means for promoting and curtailing open government.

The report covers the last seven years of scaling back public access to important health, safety, national security and environmental information. According to the report, the Bush administration has systematically reduced public access to essential information. Homeland security has played a major role in the restriction of information through the reclassification of thousands of previously publicly available documents, use of the state secrets privilege to prevent the courts from accessing supposedly sensitive national security information, and creating over one hundred new sensitive but unclassified information categories. Other changes seem to address basic government efficiency and accountability, including increased use of executive privilege to prevent effective oversight, slowing down and scaling back public access under the Freedom of Information Act and limiting the rights of whistleblowers.

The report, written by David Banisar, lays the necessary groundwork for understanding the importance of an open and transparent government, for realizing the shortcomings of the current state of information and access, and for working toward the policies of the 21st century right-to-know era.

In the preface of the report, Bob Barr and John Podesta write that the report "provides ammunition to reclaim the open and balanced system of government set forth in our Constitution and Bill of Rights. It is now up to all of us to make our voices heard."

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