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Democratic Disarray on Greenhouse Gases May Let Bush off the Hook

Two House Democrats are circulating a draft of legislation that, if passed, would effectively implement the position the Bush administration held regarding greenhouse gas (GHG) emissions prior to a recent U.S. Supreme Court ruling. The legislation threatens to create enough disarray among Democrats that the hope for progress on GHGs generated by the court decision and the 2006 elections could be dashed.

The draft legislation is the product of John Dingell (D-MI), the chairman of the Energy and Commerce Committee, and Rick Boucher (D-VA), the chairman of the committee's Subcommittee on Energy and Air Quality. The bill would amend the Clean Air Act and overturn the important April 2, 2007, decision by the Supreme Court which held the U.S.

Environmental Protection Agency (EPA) has the power to regulate greenhouse gas emissions from vehicles. The EPA had argued it did not have the authority under the Clean Air Act to regulate these emissions, but the Court clearly disagreed.

The bill would affect the ability of the U.S. to control its share of GHGs in several ways, even after the Bush administration leaves office. First, it would weaken fuel economy standards to below what the administration has proposed and below what the National Academy of Sciences has said could be achieved by off-the-shelf technology, according to a *New York Times* editorial. Second, it promotes new coal-to-liquid fuel plants that would produce alternative fuels. These coal-based fuels would actually increase the GHG emissions of conventional gasoline, according to the editorial.

The legislation would also preempt states' abilities to move forward with state and regional initiatives to reduce GHG emissions. One section of the draft adds language forbidding EPA from issuing waivers under the Clean Air Act, which currently allows EPA to permit states to implement tougher regulatory standards. California, for example, has been seeking a waiver from the EPA to allow the state to implement its more stringent air emissions program. In turn, eleven other states are waiting on this same waiver to implement their programs. (See the article in the last issue of *The Watcher* for details.) Both the waiver powers and the ability of states to set stricter standards (while the federal standards become a regulatory floor) have been hallmarks of environmental legislation. The Dingell-Boucher legislation would roll back these environmental safeguards.

Furthermore, actions taken by several cities across the nation would also become endangered. Cities from Boston to Portland, OR, have initiated plans to reduce GHG emissions. One characteristic of our federal system of government is that cities are the administrative arms of state governments, meaning that local jurisdictions often need state approval to conduct some activities. A June 9 *Washington Post* article describes the extent to which some cities are enacting programs without waiting for federal action. One of the most ambitious plans, according to the *Post* story, is New York City's, part of which needs state approval before it can be implemented.

The preemption strategy adopted by Dingell and Boucher is similar to one the Bush administration has used in a variety of contexts to prevent states from establishing stricter health, safety or environmental standards and to prevent citizens from seeking damages after injury or death from harmful products or activities.

Dingell has long been a champion of the auto industry. He railed against environmental legislation in the 1970s fearing the loss of jobs in the industry and the increased cost to vehicle makers. According to Clean Air Watch, Boucher receives significant contributions from coal companies in his district and has been promoting the coal-to-liquid fuels technology this congressional session.

Democratic leaders have reacted strongly to the draft bill. A June 8 BNA story outlined

the likely intra-party battles to come in committee and on the House floor. Henry Waxman (D-CA) and eleven other Democrats sent a letter to Dingell and Boucher expressing concern about their proposal. Waxman intends to offer a substitute amendment when the bill is marked up at a scheduled committee session June 13. Edward Markey (D-MA), chair of the House Select Committee on Energy Independence and Global Warming, also intends to offer legislation that would increase the corporate average fuel economy standards auto manufacturers must meet, according to BNA.

House Speaker Nancy Pelosi (D-CA) also opposes the Dingell-Boucher proposal because it would halt California's implementation of its vehicle emissions program. Pelosi established the controversial committee Markey now chairs because she wanted a committee fully devoted to resolving these difficult global warming issues. Her move was regarded by some as an insult to Dingell, whose committee retains jurisdiction over the issue. Democrats would be wise to put aside the infighting and focus on the larger context, as the *New York Times* editorial reminds us:

When Americans elected a Democratic Congress last November, they were voting to end politics as usual and special interest legislation. On the vital issues of energy independence and global warming they are not only in danger of getting more of the same but also, unless Nancy Pelosi and other Democratic leaders step forward, winding up in worse shape than they were under the Republicans.

White House Meets with Industry on Smog Standard

The White House Office of Information and Regulatory Affairs (OIRA) is reviewing the U.S. Environmental Protection Agency's (EPA) revision to the national ozone standard. A number of scientists have urged EPA to adopt a more stringent standard for ozone, also known as smog. Unusually, Vice President Dick Cheney's office has involved itself in the review of the standard. OIRA has also been consulting with industry representatives as it prepares to make edits to the standard and make recommendations to EPA.

On May 24, EPA sent to OIRA the review of the National Ambient Air Quality Standards (NAAQS) for ozone. EPA's NAAQS program regulates a variety of air pollutants found to be harmful to public health. NAAQS is the seminal regulatory program enforcing the Clean Air Act. The Act requires EPA to periodically revise all NAAQS standards, including the ozone standard, to reflect changes in the scientific understanding of air pollutants and the technological feasibility of regulating them.

Executive Order 12866, Regulatory Planning and Review, which governs parts of the federal rulemaking process, requires agencies submit to OIRA all rules either the agency or OIRA deems "significant." In addition to being deemed significant, the ozone standard revision is considered "economically significant," meaning it is anticipated to have an annual effect on the economy of $100 million or more. Economically significant rules are subject to the most rigorous OIRA reviews.

Environmentalists and public health experts are carefully watching the review of the ozone standard. Frank O'Donnell, president of the nonprofit advocacy group Clean Air Watch, says, "Smog is a very dangerous public health threat." Clean Air Watch and other groups believe the current primary standard of 0.08 ppm is inadequate to protect public health. O'Donnell says, "Science has shown that current standards are nowhere near good enough to protect kids with asthma or other Americans."

A number of scientific bodies have recommended a tighter standard. An EPA staff paper finalized in January states a recommendation for a standard "somewhat below" the current standard and as stringent as 0.060 ppm. In March, EPA's Clean Air Scientific Advisory Committee (CASAC) recommended EPA adopt a standard no greater than 0.070 ppm. Later in March, EPA's Children's Health Protection Advisory Committee sent a letter to EPA Administrator Stephen Johnson urging EPA to adopt a standard of 0.060 ppm. In April, a group of 111 scientists and medical professionals sent a letter to Johnson urging a more stringent standard. The individuals did not recommend a specific level but did cite CASAC's not higher than 0.070 ppm recommendation, according to BNA news service (subscription).

The scientific bodies and the individual professionals are unanimous in recommending the revised standard contain an additional decimal place. They contend the current standard, which is specified to the hundredth decimal place, has allowed state enforcement programs to round the standard to 0.085ppm, effectively lowering its stringency.

The draft revised standard is not currently available to the public. However, OIRA has conducted two closed-door meetings to discuss the standard, according to its website. Attendees of the first meeting, held June 4, included OIRA Administrator Susan Dudley and staff members of OIRA, the White House Office of Management and Budget (OMB), the White House Council on Environmental Quality and the Office of the Vice President (OVP). Non-governmental attendees included representatives from the Chemical Industry Institute, the Auto Alliance, and AF&PA, a wood products trade association. No EPA official attended the meeting.

Of particular note at this first meeting with industry representatives was the presence of a representative of the Vice President's office. The OVP is not usually involved in OIRA review of rules. In 2002, the Bush administration issued an executive order which removed the Vice President from the review responsibilities given to the office by earlier executive orders. The presence of a representative from the Vice President's office, as well as Dudley, indicates the priority the administration gives to this rule.

Attendees of the second meeting, held June 8, included staff members of OIRA and OMB and a representative of EPA's Office of Air and Radiation. Non-governmental attendees included representatives from Edison Electric Institute and the American Chemistry Council.

Critics are concerned about industry's access to the White House review process. O'Donnell says industry representatives come to these meetings with "a clear agenda of trying to prevent tougher standards from taking place." As of publication of this article, OIRA had not returned phone calls from OMB Watch seeking comment on the issue.

EPA is under a court mandate to publish a Notice of Proposed Rulemaking by June 20. At that time, the notice and comment period for the draft revised standard will begin. A final action is expected in the early part of 2008.

Long-delayed EPA Risk Assessment of Endocrine Disruptors Exhibits Flaws

In its ninth year of work on the issue, the U.S. Environmental Protection Agency (EPA) is about to begin the risk assessment process for an important but little-known group of chemicals called endocrine disruptors. However, scientists are concerned early indications of the assessment's construction will produce scientifically suspect results.

Risk assessments are an important early step in the regulatory process. Risk assessments often inform federal regulators of the certainty of a public hazard and serve as a factual basis for a regulatory response.

EPA's Endocrine Disruptor Screening Program (EDSP) is in the process of constructing a complex risk assessment to determine the effects of certain substances on the human endocrine system. As in the case of the EDSP, agencies often perform risk assessments to determine the hazard level of substances for which a great deal of data is not available and which have not yet been subjected to federal regulation.

Little is known of the exact effects of endocrine disruptors. An endocrine disruptor is any substance which alters the function of the endocrine system. The endocrine system regulates certain mood, growth and development functions including hormonal and thyroid functions. Scientists are still uncertain as to the types of substances which may be endocrine disruptors and the levels of exposure that may jeopardize public health. Scientists suspect endocrine disruptors to be commonly found in a number of consumer products including pesticides, cosmetics and finished plastics.

Concern over the impact of products on the human endocrine system caught the attention of Congress in 1996. That year, Congress passed the Food Quality Protection Act, which required EPA to screen the effects of pesticides on the human endocrine system. The law also instructs EPA to take action "as is necessary to ensure the protection of public health" if finding a substance to affect the endocrine system (21 USC 346a(p)).

Subsequently, in 1998, EPA established the EDSP. However, the agency is still in the process of finalizing its risk assessment. The agency has yet to study the effects of any

pesticide on the human endocrine system.

The risk assessment will be a two-tier process. The first tier will use a variety of scientific experiments to determine whether substances interact with endocrine systems in any way. The second tier will attempt to determine exact effects at varying doses. EPA is still in the process of developing the experiments for use in the tier one stage.

Congress has indicated its growing impatience with EPA's lack of progress on implementing the requirements of the act. In a February House Appropriations subcommittee hearing, Rep. Jim Moran (D-VA) questioned EPA Administrator Stephen Johnson on the issue. Johnson's flippant response was, "We have been doing the research, but there's this pesky thing called science."

However, scientists are assailing this risk assessment as scientifically weak. A *Dallas Morning News* article summarizes the growing concern of the scientific community. For example, scientists are expressing concern EPA has not properly constructed the dose-response assessment, which compares dosage level to health effect. Unlike other contaminants, endocrine disruptors may cause different or more serious adverse effects at trace levels than at greater levels.

Scientists are also concerned about the influence of industry in construction of the risk assessment. Scientists worry EPA may allow chemical companies to choose the breed of rat on which they will test chemicals. Certain rats have exhibited high tolerances to the effects of endocrine disruptors.

Critics are also concerned with potential cuts to the budget of EPA's work on endocrine disruptors. President Bush's budget submission to Congress proposed a $1.6 million — or 22 percent — cut to EDSP. Democrats in both the House and Senate have indicated they would restore this and other proposed cuts to EPA's budget; however, those appropriations bills remain in committee.

On June 11, EPA released a draft list of 73 pesticides slated to undergo the first round of first tier testing. The public may comment on the list upon its publication in the *Federal Register*. EPA hopes to begin the risk assessment process for endocrine disruptors later this year.

Appropriations Season Kicks Off

Congress shifted into full appropriations mode the week of June 4 as both the House and Senate began subcommittee markups of the twelve individual appropriations bills. As the White House and congressional Democrats continue to trade barbs about potential vetoes of spending bills above President Bush's request, the House is scheduled to consider its first four appropriations bills on the floor this week — all of which exceed the president's requested spending levels. Democrats are hoping to pass all appropriations

bills before October 1, the start of the new fiscal year, a feat not accomplished since 1994 — the last year Democrats controlled both chambers of Congress.

On June 4, House Appropriations Committee Chairman David Obey (D-WI) announced the breakdown of the total discretionary budget to each of the twelve appropriations subcommittees. These numbers, called 302(b) allocations, give each subcommittee chairman an overall target for the discretionary programs under his or her jurisdiction.

Despite repeated premature veto threats from Office of Management and Budget Director Rob Portman, Obey and the House committee approved subcommittee allocations above the president's request in eight out of the 12 bills. (See breakout of the House's 302(b) allocations) The House levels in the remaining four bills (Defense, Financial Services and General Government, Legislative Branch, and State-Foreign Operations) were only a combined $5 billion below the president's request.

The administration may have backed itself into a corner by vowing to veto any appropriations bill that exceeded the president's request so early on in the process. On June 6, the House Appropriations committee approved the Military Construction-Veterans Affairs bill by a unanimous 56-0 vote, including all 29 committee Republicans. The bill is currently $4 billion above the president's request, and should he hold true to his earlier commitments, Portman will recommend that President Bush veto the bill. Since some appropriations bills have been vastly underfunded over the last several years and many of the programs within the bills are popular with both parties (like the Veterans Health programs funded in the House Military Construction-VA bill), it is likely the president will be boxed in on more than just this appropriations bill.

But that has not stopped some House Republicans from attempting to bolster the president's new-found "commitment" to fiscal responsibility. The Republican Study Committee (RSC), a conservative group of House Republicans, sent the president a letter vowing to support any veto of appropriations bills that are higher than the president's request. The RSC hopes to garner enough signers on the letter to show sufficient support to sustain a presidential veto of any FY 2008 appropriations bill. While the official list of signers to the letter has not been released, press reports indicate the RSC has convinced 135 out of a necessary 146 legislators to sign the letter.

After completing a busy workload the week of June 4 within the appropriations committee, the House is scheduled to consider four appropriations bills on the floor this week, starting with the Homeland Security bill today (June 12). At $37.4 billion — $2.1 billion above the president's request — the Homeland Security bill may also end up being a showdown between the president and Congress. Also on the docket this week are the Energy and Water, Military Construction and Veterans Affairs, and Interior and Environment appropriations bills. In addition, the full House Appropriations committee currently has five additional bills ready for consideration (Financial Services, Labor-HHS, Legislative Branch, State-Foreign Ops, and Transportation-HUD).

The Senate is just beginning its appropriations committee work, leading off with the Military Construction-VA and Homeland Security bills. The subcommittee mark-ups for both of those bills are being held today (June 12), and the full committee will consider the bills on June 14.

Congress Still Struggling to Settle Earmark Disclosure Procedures

Five months after the House adopted institutional earmark reform rules (H. Res. 6) and the Senate passed statutory requirements governing earmark disclosure (S. 1), confusion reigns in both chambers on how earmark disclosure rules will work and who will administer them. Key members of the Senate and House Appropriations Committees have unilaterally altered the rules in the intervening months, and even with appropriations season upon us, it appears the disclosure rules and their application remain in flux.

S. 1, the Senate's lobbying and ethics reform bill that passed January 18, requires that members seeking earmarks provide a written statement to the chairman and ranking member of the committee of jurisdiction including:

the Member's name; the name and address of the intended recipient of the earmark ... identification of the [beneficiaries]; the purpose of such earmark or benefit; and a certification that the Member or spouse has no financial interest in them [with] the name of the requesting Member is made available to the general public on the Internet for at least 48 hours before its consideration.

But because the Senate has not yet enacted S. 1, the earmark disclosure requirements are not yet binding. Because of this, Senate Appropriations subcommittee chairs began improvising on their own. On Feb. 21, the Interior and Environment subcommittee sent Senators a detailed procedure for proposing earmark requests with a March 30 deadline. On Feb. 28, the chairman and ranking Republican on the Energy and Water Development subcommittee released a different procedure that asked for earmark requests that detail the beneficial role of the spending. Several subcommittees sent out earmark solicitation forms omitting the requirements of the new ethics bill. The form from the Health, Education, Labor, and Pensions subcommittee asked only that the request be made by April 13.

Perhaps because of the proliferation of subcommittee approaches, Senate Appropriations Committee chair Robert Byrd (D-WV) announced in mid-April that the full committee would apply the standards established in S. 1 even though the bill has not yet been enacted. Critics, led by Sen. Jim DeMint (R-SC), complained that the Senate shouldn't have to rely on Sen. Byrd ☼ to enforce S. 1: "There's no reason at all we shouldn't adopt [the earmark provisions of S. 1] as a Senate rule." Outside critics even suggested that adopting those provisions as a Senate rule would run afoul of an earlier

pledge by Byrd to place a moratorium on *all* earmarks until a reformed process is firmly established.

Meanwhile, House Appropriations Committee chair David Obey (D-WI) has floated several earmarks procedures, all of which appear to flout the guidelines established by H. Res. 6, the House lobbying and ethics rule changes passed January 4 (which are identical to those in S. 1, minus the Internet publication requirements). After Obey set a March 13 deadline for the submission of earmark requests to his committee, the twelve House Appropriations subcommittee chairs nevertheless imposed a diversity of application procedures of their own. After Appropriations ranking member Jerry Lewis (R-CA) and others cited "confusion stemming from new House ethics rules," Obey extended his mid-March deadline to April 27.

In the six weeks since then, Obey has struggled to settle on a legislative process for the 36,000 earmark requests his committee has received. In late May, Obey announced he would ignore the January reforms adopted by the House requiring that earmarks and their sponsors be identified in spending bills when they are introduced. Instead, he said he would delay the inclusion of earmarks into spending bills until they are in conference, when they can no longer be removed from the bill by amendment.

This announcement was met with harsh national and home state criticism in the press and calls from watchdog groups, including OMB Watch, for reform.

In spite of guidelines passed by both houses of Congress and increasingly intense media scrutiny of the issue, the situation continues to evolve. As recently as June 11, Obey took a completely different tack, according to the *New York Times*:

'Before the August recess,' [Obey] said, his office intends to list 'every earmark that the committee expects to try to include in a final conference product' with the Senate. Any lawmaker can question or challenge any request and, he said, the earmark's sponsor will be asked to respond. 'They'll be hanging out there for 30 days' of public scrutiny and comment while Congress is on its summer break.

Whether this approach will stick — and comply with the House rules governing earmarks — remains to be seen.

Senate Committee Considers Bill to Criminalize Deceptive Election Practices

The Senate Judiciary Committee held a hearing June 7 on a bill that would criminalize deceptive election practices. The Deceptive Practices and Voter Intimidation Act of 2007 (S. 453) is cosponsored by Sens. Barack Obama (D-IL) and Charles Schumer (D-NY). It would make it illegal to purposefully misinform or confuse voters about an upcoming election. The House Judiciary Committee already approved a companion bill (H.R. 1281)

in March. The bill, should it become law, would give nonprofit organizations that monitor elections new tools to combat voter suppression and intimidation.

Witnesses testify to deceptive practices in Maryland during 2006 election

Sen. Ben Cardin (D-MD) — a strong supporter of the legislation — testified about his own experience with dishonest campaign tactics. During his 2006 campaign for Senate against then Lt. Governor Michael Steele (R), deceptive fliers were distributed in predominantly African American communities in Prince George's County, MD, on election day. The fliers displayed a "Democratic Sample Ballot" with the names of the two Republican candidates — incumbent Governor Robert Ehrlich and candidate Steele, implying that Democrats were endorsing Steele. At the hearing, Cardin said these kinds of deceptive campaign tactics "undermine and corrode our very democracy and threaten the very integrity of our electoral process."

Maryland Attorney General Doug Gansler (D) also testified before the Committee and spoke of witnessing long lines of Prince George's County citizens, mostly African Americans, waiting at polling places to vote on election day. Gansler called for an end to these types of "senseless obstacles" to voting and noted that the legislation currently being considered builds upon the 1965 Voting Rights Act, which was aimed at protecting voters from intimidation.

During the 2006 election, there were numerous reports of similar attempts to disenfranchise and confuse voters. Election Protection, a nonprofit that monitors elections, received more than 26,000 calls during October and November from voters in 31 states reporting electoral problems they had encountered.

Legislation would enable nonprofits to file complaints with Attorney General

The Deceptive Practices and Voter Intimidation Act of 2007 amends federal criminal law to make it illegal for any person to intentionally misinform another in regards to:

1. the time, place, or manner of conducting any federal election; or
2. the qualifications for or restrictions on voter eligibility for any such election.

The pending bill, moreover, makes the intent of stopping another person from voting a key aspect of the offense.

The legislation would impose penalties of up to $100,000 and five years in prison for knowingly conveying false information about an election. The legislation enables groups and individuals to file criminal complaints reporting fraudulent election practices or communications with the U.S. Attorney General. The bill would also give individuals the right to file suit in order to stop deceptive practices as they occurred.

Currently, the U.S. Department of Justice is not obliged by law to investigate claims of voter suppression and intimidation. Under the new law, the Justice Department would be required to prepare reports for Congress after each election documenting 1) occurrences of voter deception and suppression, and 2) the efforts the department plans to undertake in order to prevent similar crimes in the future.

Other testimony

Also testifying before the Judiciary Committee in support of bill were: Obama; Sens. Patrick Leahy (D-VT) and Schumer; Jack Johnson, County Executive, Prince George's County, MD; Hillary Shelton, Director of the Washington Bureau of the NAACP; John Trasviña, President of the Mexican American Legal Defense and Education Fund; and Richard Briffault, a law professor at Columbia University. Briffault argued that the bill does not limit free speech as protected under the First Amendment.

Testifying in opposition to the bill was William B. Canfield, a partner specializing in federal elections law at the Washington, DC, law firm of Williams and Jensen. Canfield testified that he was opposed to the bill because of its "overly wide scope" and because, in Canfield's opinion, "the Department of Justice has all the authority it needs to root out such wrong-doing."

The Commissioner of the U.S. Commission on Civil Rights, Peter Kirsanow, also spoke at the hearing, urging the members to add three deceptive practices to the bill not currently included: fraudulent registration, multiple registration, and compromised absentee ballots.

House committee passed companion bill in March

In March, the House's version of the bill passed the Judiciary Committee. The act was co-sponsored by Reps. Rahm Emanuel (D-IL) and Judiciary Chairman John Conyers (D-MI), along with 60 other House members. Rep. Jerrold Nadler ☼ (D-NY), chair of the Subcommittee on the Constitution, Civil Rights and Civil Liberties, hailed the Committee's endorsement of the bill, saying the legislation "is absolutely necessary to protect voters — especially voters in minority communities, and voters with limited English language proficiency — from the dirty tricks brought to light in our hearing." An earlier version of the bill was first introduced in 2005 but did not make it past the Judiciary Committee.

Charities Respond to Treasury's Overbroad Allegations of Terrorist Ties

On June 8, charities wrote to the Secretary of the Department of Treasury, Henry Paulson, to express their concern about continuing statements from Treasury that allege charities are a significant source of terrorist financing. The letter was sparked by a report

from the Treasury Inspector General for Tax Administration (TIGTA) published in late May that claimed charities are a "significant source of alleged terrorist activities." The charities' letter calls upon Treasury to retract this claim, saying, "Treasury needs to recognize that charities are part of the solution and not part of the problem."

Treasury Lacks Hard Evidence

The letter notes that instead of providing data to substantiate its claim that charities are a significant source of terrorist activities, Treasury cites news reports about front organizations, primarily non-U.S. groups or the role of terrorist networks in natural disaster relief areas. The letter argues that Treasury has never provided information that proves a considerable portion of charitable funds are diverted to terrorist organizations. In fact, its own data shows that overall, charities only account for 8.75 percent of the individuals, companies and organizations on Treasury's Specially Designated Nationals (SDN) list. There are 43 charities on that list, and only six of these are based in the United States, making U.S. charities 1.25 percent of the designations. This hardly justifies Treasury's broad claims about the role of charities in supporting terrorism, according to the charities that sent the letter.

Anti-Terrorism Measures Taken by the Charitable Sector Have Been Treated Dismissively

The letter argues that Treasury does not respect the positive role charities play in the world, saying, "Daily more than 1 million 501(c)(3) organizations provide charitable services within their communities and throughout the world. Many of these activities act as a counter balance to terrorist influences." It also notes several steps the nonprofit sector has taken to guard against diversion of funds to terrorism, including the 2005 publication of *Principles of International Charity*. Unfortunately, Treasury still relies heavily upon its own guidelines and has ignored the sector's requests that they be withdrawn.

Watch Lists Are Riddled With Errors

Treasury's over-reliance on inaccurate watch lists, such as the SDN list, raises major concerns about the TIGTA recommendation that the Internal Revenue Service (IRS) use the even larger Terrorist Screening Center (TSC) watch list. Referencing yet another inaccurate watch list is not the most effective use of resources, according to the charity letter. Moreover, grantmakers have spent thousands of dollars checking the SDN list with little benefit for doing so.

The letter was signed by the following organizations:

- American Civil Liberties Union
- Fellowship of Reconciliation
- Fund for Nonviolence

- Global Fund for Women
- Grantmakers Without Borders
- Islamic Society of North America
- Kinder USA
- Life for Relief and Development
- Moriah Fund
- Muslim Advocates
- Muslim Public Affairs Council
- National Council of Nonprofit Associations
- OMB Watch

IRS Reports on 2006 Political Activities Enforcement Program, Releases Guidance

On June 8, the Internal Revenue Service (IRS) released a report on the initial results of its 2006 program enforcing the ban on partisan electioneering by charities and religious organizations. The same day, it also released Revenue Ruling 2007-41, which provides guidance nonprofits can rely on in planning permissible voter education and mobilization activity. The results of the enforcement program to date show a continued low level of violations.

Overall, the IRS received 237 complaints for the 2006 election season. Of these, 137 were dismissed after the initial review, and the remaining 100 were investigated. 44 percent of these are religious organizations. The IRS has completed 40 investigations, and none merited revocation of exempt status. Written advisories were issued in 26 cases, and 14 were dismissed after further investigation. The types of activities selected for investigation indicate that many cases occur in gray areas of the law, such as allowing candidates to speak at organizational functions or distributing printed materials. This makes the new guidance a welcome development, but clearer rules are still needed.

The report said the IRS now tracks organizations that received written advisories as a result of activities in 2004 to see if there are further violations, using quarterly Internet searches to review publicly available documents and news reports.. So far, there have been "no instances of repeat political intervention." Another new development is the Political Contributions Sub-Project. It compares state data on campaign finance contributions with the IRS lists of 501(c)(3) organizations. It found 269 cases of possible direct campaign contributions by charities, which are not permitted to make campaign contributions. In the 92 cases investigated, 65 organizations received written advisories, and no violations were found in 21 cases (the match appeared to be due to errors in state databases).

The guidance in the new Revenue Ruling uses 21 examples to illustrate permissible and impermissible activities of voter education, registration and participation efforts, activities of individuals, candidate appearances, issue advocacy, renting facilities,

mailing lists and other business activities, and web sites. While it leaves many gray areas undefined, it makes two important points:

- "Section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office."
- Issue advocacy communication "is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election."

For a summary of the Revenue Ruling, click here.

New Complaints to the IRS about Political Intervention

In late May, news surfaced of an Internal Revenue Service (IRS) inquiry into a Wichita, KS, church, Spirit One Christian Center. Another new complaint, against Bill Keller Ministries, also was made public. Both cases involve statements about candidates that are alleged to indicate opposition to their election.

On April 20, 2007, the IRS sent an "inquiry" letter to Spirit One Christian Center in Wichita, stating that "a reasonable belief exists that your organization has engaged in political activities, which activities could jeopardize your tax-exempt status as a church." Pastor Mark Holick was asked to answer 31 questions about political activities at the church. The questionable activities include:

- messages on the church's marquee critical of Governor Kathleen Sebelius (D) and Attorney General Paul Morrison's (D) positions on abortion during the campaigns;
- voter guides distributed in front of a Wichita church;
- Holick's involvement with Kansans for Life; and
- an appearance by former Kansas Attorney General Phill Kline (R) at the church.

In October 2006, Citizens for Responsibility and Ethics in Washington (CREW) asked the IRS to investigate churches for possible involvement in Kline's re-election campaign.

According to the church's website, the IRS alleges that the church also used their website to try and stop Sen. Hillary Clinton's (D-NY) campaign for president.

The IRS letter to Holick is posted on the church's website. "Our concerns are based on information in messages posted on the sign in front of your building shortly before the November election in 2006, your website (www.spiritonecc.org), and in an e-mail sent by your organization. This information indicates that you may have intervened in the political campaigns for the offices of Governor and State Attorney General of Kansas and in the upcoming Presidential election."

According to the Wichita Eagle, the IRS wanted information about four statements posted on the church marquee, including how long they were posted, when they were put up and what the cost was. The four statements posted outside the church attempted to connect Sebelius, who was up for reelection, and Morrison to George Tiller, a doctor who provides late-term abortions:

- "Morrison accepts blood money from abortionist Tiller. How many babies??"
- "Canfield supports life and traditional family, Barnett does not."
- "Paul Morrison early release of felons. Reginald Carr multiple murders."
- "Abortionist Tiller has given $300,000 to Sebelius. Price of 1,000 babies!"

Holick has been outspoken in his objections to the IRS questions, holding a news conference and posting all materials on the church's website, saying it is a free speech issue.

Meanwhile, Americans United for Separation of Church and State (AU) asked the IRS to investigate a St. Petersburg, FL, ministry that advised people not to vote for presidential candidate Mitt Romney. The group in question is Bill Keller Ministries and its associated website Liveprayer.com. Keller has a call-in show, during which on May 11 he warned listeners, "If you vote for Mitt Romney, you are voting for Satan!" Keller's message added that Romney's nomination will "ultimately lead millions of souls to the eternal flames of hell." However, Keller claims he made a spiritual statement, not a political one.

The Liveprayer.com Daily Devotional from May 11 also has very strong, harsh remarks about the Mormon faith. In the AU press release, Rev. Barry W. Lynn, executive director of Americans United, said that taken together, this activity is a "blatant example of religiously based partisan politicking."

The IRS could review the case and take it up with Bill Keller Ministries, though it is up to the organization to make information about the case public.

The Department of Homeland Security's Dangerous Pattern

On June 5, Rep. Bennie Thompson ☼ (D-MS), chairman of the House Homeland Security Committee, wrote an op-ed in *The Hill* criticizing the Department of Homeland Security (DHS) for the hasty development of ineffective programs. Thompson cites DHS's failed efforts to implement an integrated information-sharing network, but, as he notes, this is merely one of many examples of misplaced priorities and ineffective leadership at DHS. The Department's attempt to build a robust chemical security program could serve as another example.

Thompson accuses DHS of rushing to put in place the information sharing network "without sufficient input from those who would be using it," with the result being a system that does not have the trust of states and other participants and "that fails to

meet the needs of its users, [and] duplicates other efforts." Many of the shortcomings of the DHS information sharing network were highlighted in a previous *Watcher* article "DHS Does Not Share Well with Others."

DHS's efforts to design and implement a chemical security program could easily also fall under Thompson's "haste makes waste" pattern. DHS has taken the authority given by Congress to implement a chemical security program and watered it down to the point that it holds little hope of actually increasing the public's protection from accidents or attacks on chemical plants.

The regulations are weak in three respects. First, DHS maintains the right to preempt stronger state chemical security regulations. This could be severely detrimental to the effort of states to protect their citizens against chemical facility accidents or attacks. Second, the program is highly secretive. What facilities are covered by the regulations, what facilities are failing to comply with the regulations and what sorts of specific improvements are being made by facilities can all be kept secret from the public. Third, DHS rejected the proposal to require companies to report on safer chemicals, procedures or technologies that could be implemented to reduce a facility's risk. Not requiring companies to even consider making such changes reduces the possibility that they will actually be made. These weaknesses were included in DHS's regulations despite numerous comments pointing out the problems these provisions would cause in creating an effective protection program.

As a result of these shortcomings, public interest and environmental groups have encouraged the chairs of the key committees — Reps. Thompson and Sheila Jackson-Lee (D-TX) — to force DHS to devote the necessary time and effort to implement an effective and robust chemical security program. Any delay in DHS's action leaves millions of Americans at constant risk of a dangerous chemical accident or attack.

Kyl Unveiled as FOIA Foiler

Shortly after supporters of the Openness Promotes Effectiveness in Our National (OPEN) Government Act began aggressive online and telephone campaigns to discover the senator who had placed an anonymous hold on the bill, Sen. Jon Kyl ☼ (R-AZ) acknowledged that he was blocking the legislation. Kyl explained that the move was at the behest of the Department of Justice (DOJ), which he explained had "uncharacteristically strong objections to the bill."

Apparently, DOJ believes some of the provisions in the bill are too strong. But Sen. Patrick Leahy's (D-VT) office claims that such concerns have been addressed already, including the removal of a section that would have prevented the government from withholding information if an agency took too long to respond to a FOIA request.

DOJ also reportedly believes that President Bush's 2005 Executive Order on FOIA (E.O.

13392) is working well in improving agency implementation of the act and should be given more time before a legislative fix is attempted. Public interest groups have been less impressed with the results of the E.O. after a review of the agency FOIA plans revealed that "many of the improvement areas were either not addressed or rated as poorly addressed."

Kyl's public acknowledgment of his hold on the legislation has not changed the fact that the bill remains stuck because of the hold. Until the differences can be resolved, Kyl has stated that he will continue to block the bill. During the Judiciary Committee's April vote on the bill, Kyl voiced concerns but agreed to work with Leahy to address the issues. However, Leahy's office reports that it has received no contact from Kyl about the bill ever since.

If the hold is not removed, the only way the bill will reach the Senate floor is under regular order, meaning that considerable floor time would need to be reserved for debate of the bill. Under Senate rules, nearly any type of amendment could be added to the bill, making it a potential legislative Christmas tree, which could kill the overall bill. Since the bill is considered non-controversial, moving it through unanimous consent, which takes no Senate time, is the logical path — except for the Kyl hold.

Restored EPA Budget Holds Hope for Libraries and Labs

On June 7, the House Appropriations Committee approved a $27.6 billion Interior-Environment spending bill that increases the U.S. Environmental Protection Agency's (EPA) FY 2008 budget to $8.1 billion, a $361 million increase over current spending. It is also $887 million more than President Bush's budget request, which will likely trigger a veto threat.

The appropriations bill currently allocates $788 million for core scientific research. This may be welcome news for EPA's network of libraries and laboratories, which have suffered from downsizing attempts in anticipation of significant 2008 budget cuts. The budget restoration may allow EPA to abandon its controversial plans for closings and consolidations.

In both cases, EPA cited the proposed cuts as necessitating restructuring efforts and has initiated plans to close multiple libraries and labs. The agency moved quickly in closing libraries in Chicago, Washington, DC, Dallas and Kansas City and limiting public access in four others. Congress voiced strong objections to the agency's actions, including a letter from powerful Democrats to halt all additional EPA library closings. In response, EPA agreed to not close any of its remaining 22 libraries, but took no action on the five regional libraries it had already closed.

However, the EPA labs, for which plans to cut staff and consolidate offices were leaked after the congressional hearings on EPA libraries, currently have no such protection.

Stephen Johnson, EPA's administrator, has promised that no agency labs will be closed during his tenure, although a June 2006 memorandum indicates differently.

The exact amount of the research funding that would go to EPA libraries and labs cannot be determined from the broad breakdown provided in the bill. Such decisions will be left to the agency, should the appropriations bill make it through Congress and be signed by the president. However, the prospect of additional funding may be sufficient to derail restructuring efforts for labs and libraries that were predicated on severe funding reductions.

The House Interior and Environment bill is expected to be voted on the week of June 11.

NASA Inspector General Faces Tough Questioning from Congress

On June 7, the Senate and House held a joint hearing to investigate the conduct of the National Aeronautics and Space Administration's (NASA) Inspector General, Robert Cobb. The hearing was conducted by the House Science and Technology Subcommittee on Investigations and Oversight and the Senate Commerce, Science, and Transportation Subcommittee on Space, Aeronautics and Related Matters. Questions raised during the hearing concerned issues including the inspector general's alleged manipulation and interference with investigations, creation of a hostile environment for whistleblowers, and the destruction of records.

Debra Herzog, previously Cobb's Deputy Assistant of Investigations, detailed how Cobb allegedly tried to halt or interfere with federal investigations of NASA premises, including the questioning of a search warrant. Cobb was also accused of severe negligence for trying to protect the reputation of the OIG and NASA by failing to investigate the computer theft of NASA rocket engine designs. The estimated damage from the hacking is $1.9 billion and should have been reported to the U.S. State Department immediately. Cobb was also accused of unethically consulting with NASA administrators regarding what matters should be investigated.

Sen. Claire McCaskill ☼ (D-MO) expressed dismay about an inspector general interfering with a federal investigation. Such investigations are to be performed without delay to insure that no incriminating documents are destroyed. Rep. Bart Gordon (D-TN), chairman of the House Science and Technology Committee, expressed concern that Cobb seems to give priority to pleasing NASA's top officials as opposed to providing an independent audit and investigation into NASA's activities.

There were various allegations that Cobb created a hostile environment for whistleblowers, adding to an unacceptable work environment. Also of concern was the disclosure to NASA management of the names of those who cooperated in investigations into his behavior. A report by the President's Council on Integrity and Efficiency (PCIE),

listing the names of NASA employees who complained about Cobb, was somehow disclosed to NASA managers. Sen. Charles Grassley ☼ (R-IA) stated in his testimony before the joint committee, "This effectively painted a target on the backs of NASA employees who provided information to PCIE investigators and to Congress."

Cobb has also developed an inappropriately close relation with the current general counsel at NASA, Michael Wholey, stated Rep. Brad Miller ☼ (D-NC), chairman of the House Subcommittee on Oversight and Investigations. Wholey went so far as to destroy a video record of a meeting between the NASA administrator Dr. Michael Griffin, Cobb and the OIG staff, according to Miller. The video supposedly documented an inappropriate encounter in which the administrator instructed the OIG staff as to what they should be doing. "This represents the only time — certainly in the history of the Science and Technology Committee and perhaps the entire Congress — that an agency general counsel has admitted destroying agency records to keep anyone from viewing them," stated Miller.

Gordon and Miller, along with Sen. Bill Nelson (D-FL), Grassley and McCaskill, called upon Cobb to resign. Cobb told the hearing room that his department's work was of the highest quality and that he was still worthy of his position. "I proudly stand behind the work of the NASA OIG," stated Cobb.

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