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Specter's NSA Bill Eradicates Fundamental Liberties

The White House and Sen. Arlen Specter (R-PA) are nearing a compromise on legislation that would authorize the National Security Agency (NSA) domestic spying program. The bill, unfortunately, as it currently stands, poses a severe threat to fundamental civil liberties.

Since the disclosure of the NSA's domestic spying program in December 2005 by *The New York Times* and on the heels of the revelations about yet another secret surveillance program, Specter has been working on a bill that would provide the president with the means to protect against terrorism without compromising "the very civil liberties he seeks to

safeguard."

Specter's National Security Surveillance Act of 2006 (S. 2453), however, does little to safeguard civil liberties. The bill includes a number of provisions that would eradicate protections against unreasonable searches and seizures that are protected in the Fourth Amendment.

Current law provides two exclusive means for receiving approval for wiretaps on an American citizen's communications. The government can either obtain a warrant for wiretapping under the probable cause requirement of the Fourth Amendment or receive a Foreign Intelligence Surveillance Act (FISA) order under a less stringent requirement. It should be noted that FISA orders are typically only issued for cases involving agents of a foreign power or suspected terrorists, thus the FISA court has long operated with greater flexibility on constitutional issues. The FISA Court is also considered highly deferential to the government's point of view, authorizing the vast majority of FISA order requests.

The Specter bill would provide another approval method for wiretaps. The bill states that the government can also receive communications of American citizens under "the constitutional authority of the executive." Essentially, the bill would allow the federal government to wiretap anyone's phone calls or read anyone's emails without judicial

approval or oversight. No longer would the government have obtain a court's approval to wiretap communications. Also troubling, the removal of the requirement of a search warrant or FISA order would be retroactive to the date that FISA was passed in 1978. The bill, if passed, would thus automatically make legal the NSA's warrantless spying program that dates back several years.

Specter falsely claims that his bill would require the government to go before the FISA Court--a secret court which issues surveillance orders--to justify the NSA domestic spying program. Instead, the government merely needs to claim that the spying program is lawful under the "constitutional powers of the executive," something that the White House has argued all along. If the government decides not to seek judicial approval from the FISA court, Specter's bill would establish a highly questionable process that violates fundamental constitutional principles.

Under the bill, the FISA Court could issue a 90-day authorization for a surveillance *program*, and unlimited reauthorizations. No other court in the country has ever allowed such an order, because it violates the constitutional principle of particularity -- that, when feasible, the subject and place of a search must have clear parameters.

Our nation's founders designed the Fourth Amendment to allow for *reasonable* searches, something that the courts have understood to mean searches that have well-defined boundaries over what and who can be searched and limitations on how long the search can

last. The authorization of an entire surveillance program would allow essentially unlimited searches of communications from broad sections of the public for an indefinite period of time.

The final troubling provision is that all cases, which challenge "the legality of an electronic surveillance program" would be automatically transferred to the FISA Court of Review. This would short circuit the legal process of legally challenging the administration's surveillance program. Currently, there are over 20 such challenges working their way through the courts.

Without the congressional oversight requirements that Specter scrapped long ago, the National Security Surveillance Act eliminates the checks and balances that ensure that executive power to search and seize communications is not abused in the fight against terrorism. The bill will undergo another round of revisions to accommodate the position of the White House and will be making its way through the Senate Judiciary Committee with the likely backing of Vice President Cheney and the administration.

Shays Looks to Limit State Secrets Privilege

Rep. Christopher Shays (R-CT) has introduced a bill to prevent the administration from abusing its all-powerful state secrets privilege. Based on the 1953 Supreme Court ruling in *Reynolds v. United States*, the state secrets privilege allows the executive branch to declare certain materials or topics completely exempt from disclosure or review by any body.

The state secrets privilege, rarely used by past presidents, has already been invoked 24 times by the Bush administration, more than any other administration over a six-year period, according to studies conducted by University of Texas-El Paso and the National Security Archive at George Washington University. In just five and a half years, the Bush administration has used this privilege almost half the number of times it was invoked between 1953 and 2001, when the combined use of 8 presidents -- Eisenhower, Kennedy, Nixon, Ford, Carter, Reagan, the first Bush and Clinton - amounted to 55 claims of state secrets. While in the past the power was used to keep specific documents from disclosure, recently the privilege appears to be invoked to deflect lawsuits against the government. It is a trend that has many concerned, including Shays.

As reported by *The New York Times*, the administration recently used the state secrets privilege to compel the courts to dismiss a lawsuit brought by a German man who had been held in Afghanistan for five months after being mistaken for a suspected terrorist with the same name. Khaled el-Masri, filed suit against George Tenet, the then-head of the Central Intelligence Agency and ten unnamed agency employees, challenging the CIA's practice of abducting foreign nationals for detention and interrogation in secret prisons overseas.

Additionally, the Justice Department has asked the courts to throw out three lawsuits

against the National Security Agency's warrantless domestic spying program. One suit has been brought by the Electronic Frontier Foundation against AT&T; the two suits were filed against the federal government by the American Civil Liberties Union and the Center for Constitutional Rights.

The state secrets privilege was also used to shut down a lawsuit by national security whistleblower Sibel Edmonds, an ex-translator for the Federal Bureau of Investigation, who was fired after accusing coworkers of security breaches and intentionally slow work performance. Edmunds, filed a whistleblower lawsuit against the federal government, *Sibel Edmunds v. Department of Justice*, which was dismissed by the D.C. Circuit Court after the U.S. Attorney General's office cite the state secrets privilege.

Essentially, in each of these cases the Department of Justice has used the state secrets privilege to shut down cases against the federal government, claiming that any discussion of the lawsuit's accusations would endanger national security. With a growing array of challenges to the government's handling of terror suspects and warrantless domestic wiretapping, target cases for this tactic are in far from short supply.

Shays believes that the state secrets provision has been used too frequently and with little public protection. In particular, he is concerned that whistleblower cases will continue to be rejected with the president employing the state secrets privilege. Accordingly, Shays has proposed language to the Executive Branch Reform Act of 2006 (H.R. 5112) that would limit the use of the state secrets privilege in blocking whistle-blowers' lawsuits. Specifically, the provision requires that courts rule in favor of a whistleblower claim if the government invokes the state secrets privilege to end the case. Basically, so long as an inspector general investigation supports the overall claim of the whistleblower and the government could no longer get a dismissal of the case by claiming state secrets privilege. Instead, under these provisions, the case would automatically be ruled in favor of the whistleblower without any public discussion of the details. In cases where no inspector general investigation has been conducted, the administration must explain to Congress why the use of the privilege is necessary and demonstrate that efforts have been made to settle the case amicably. The bill containing the Shays language was reported out of the House Government Reform Committee.

"If the very people you're suing are the ones who get to use the state secrets privilege, it's a stacked deck," said Shays, who has long been a proponent of limiting government secrecy.

Senate Strengthens Whistleblower Protections After High Court Decision

The Senate acted quickly last week to fill a gap in whistleblower protection law in light of a recent Supreme Court ruling which may have weakened First Amendment protections for

whistleblowers. The Senate passed the Federal Employee Protection of Disclosures Act (S.494), sponsored by Sens. Daniel Akaka (D-HI) and Susan Collins (R-ME), which would strengthen protections for federal government employees that expose government inadequacies.

As reported in the last issue of *The Watcher*, in May the Supreme Court ruled in *Garcetti v. Ceballos* that public employees who report suspicions of corrupt or mismanagement in the course of their duties are not protected under the First Amendment. The Court held that, "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline."

The Court's ruling compelled whistleblower advocates in the Senate to strengthen whistleblower protections.

"The need to act now was heightened because of last month's Supreme Court decision that limits whistleblower protection under the First Amendment," explained a statement issued by Akaka after the amendment's passage. "It's unacceptable for the courts to add another deterrence to federal whistleblowing."

The Whistleblower Protection Act of 1989 was intended to protect federal employees against reprisals for the exposure of government inadequacies. The Akaka-Collins Amendment modifies that law to make clear that all federal government employees are protected for "any" disclosure of government waste, fraud or abuse.

The Federal Employee Protection of Disclosures Act, according to Akaka's statement, also:

- ends the sole jurisdiction over federal whistleblowers cases of the Federal Circuit Court of Appeals by permitting multi-circuit review for five years;
- protects whistleblowers whose security clearance revocation is based on retaliation;
- provides the Office of Special Counsel with the independent right to file amicus briefs in federal courts; and
- codifies and strengthens the anti-gag provision that has been included in appropriations language since 1988.

The bill fails, however, to cover employees of intelligence agencies, including the FBI, CIA, Defense Intelligence Agency, National Imagery and Mapping Agency, and National Security Agency. The Executive Branch Reform Act passed earlier this year by the House would extend whistleblower protections to these employees.

The Federal Employee Protection of Disclosures Act was accepted by unanimous consent as an amendment to the FY 2007 Defense Department reauthorization bill (S. 2766). The amendment was co-sponsored by Sens. Joseph Lieberman (D-CT), Charles Grassley (R-IA),

Richard Durbin (D-IL) and Carl Levin (D-MI). The reauthorization bill was then passed by the Senate. Even though the House did not address whistleblower protections in its version of the defense department reauthorization bill, the issue will be taken up in the House-Senate conference.

Government Secretly Examining Financial Transactions

Yet another Bush administration secret program that gathers private information came to light last week. *The New York Times* on Jun. 23, much to the ire of the White House, broke the story of government monitoring of banking transactions involving thousands of Americans and financial institutions.

Following the Sept. 11 terrorist attacks, the Bush administration started gathering financial transaction information from the Society for Worldwide Interbank Financial Telecommunications (SWIFT) for short. SWIFT is a clearinghouse for international banking transactions, routing trillions of dollars a day between financial institutions.

While the Central Intelligence Agency (CIA) and the Treasury Department, which jointly operate the data-gathering program, have issued subpoenas for SWIFT data, those subpoenas are not for specific transactions. The Treasury Department, it has been reveals, at the same time is serving SWIFT broad 'administrative' subpoenas for millions of records at a time, a practice that troubles many civil liberties advocates, including the American Civil Liberties Union (ACLU).

In a Jun. 23 press release, the ACLU called the financial surveillance program "another example of the Bush administration's abuse of power." The statement went on to charge that "[t]he invasion of our personal financial information, without notification or judicial review, is contrary to the fundamental American value of privacy and must be stopped now."

However, the administration argues that safeguards have been put in place to protect privacy interests and the president has rebuked *The New York Times* for jeopardizing a valuable program by announcing its existence.

According to the Treasury Department, an outside auditing firm verifies that data searches are based on valid intelligence leads, and analysts must document the intelligence that justifies each search. In addition, the Treasury Department recently agreed to allow SWIFT representatives to be stationed alongside agency officials. This arrangement enables SWIFT representatives to block any search deemed inappropriate.

Safeguards notwithstanding, the administration's recent track record of sidestepping congressional oversight and expanding the scope of presidential authority to justify secret

surveillance doesn't help its case for this latest clandestine ease-dropping program.

In May, it was revealed that the National Security Agency (NSA) was secretly amassing the largest database ever created on the telephone calling habits of millions of Americans. News of the call history data mining program came as the NSA program of eavesdropping on international telephone calls without warrants remained, and remains, unresolved.

Lobby Reform Update: Shays, Meehan Introduce Bill, as Senate Reports on Charities Misuse

While the conference committee to reconcile House and Senate versions of lobby reform legislation remains in limbo, two House members have introduced a new, stronger lobby reform bill, and a Senate committee has called for an investigation into misuse of charities by Abramoff and others.

New Shays-Meehan Bill

On June 22, Reps. Christopher Shays (R-CT) and Martin Meehan (D-MA) introduced H.R. 5677, the Ethics and Lobbying Reform Act. The bill, an amalgamation of provisions supported by reformers that were left out of the House and Senate-passed bills, includes:

- Grassroots Lobbying Disclosure, which requires the disclosure of expenditures over specified thresholds by lobbying firms and nonprofits;
- Creation of an Office of Public Integrity, which creates an independent office to monitor and enforce ethics violations;
- Disclosure of Campaign Fundraising by Lobbyists, that requires registered lobbyists to disclose campaign contributions; and
- Revolving Door, which increases the ban on lobbying by former public officials from one year to two years.

The Senate appointed conferees on the lobbying bills weeks ago, but House Speaker Dennis Hastert (R-IL) has yet to name the House conferees. Shays and Meehan introduced their bill as Republican congressional leaders and their staff continue to attempt to hammer out the discrepancies between the House and Senate lobby reform bills before the conference committee meets. Shays and Meehan sent a letter, joined by Sens. John McCain (R-AZ) and Russ Feingold (D-WI), to the Senate conferees and House leadership urging them to adopt strong lobbying reform measures similar to those in the Shays, Meehan bill.

However, the conferees and leadership have been slow to move toward a resolution. A sticking point continues to be a provision in the House-passed bill designed to rein in independent 527 organizations. Senate Rules and Administration Committee Chairman Trent Lott (R-MS), who is also one of the Senate conferees, has said that he opposed putting

the 527 provision in this bill. Conversely, House Majority Whip Roy Blunt (R-MO) has stated, "My view is it's an essential part of the lobbying bill."

In the Senate: A Call for More Scrutiny of Nonprofits and Lobbying

A report by the Senate Committee on Indian Affairs, released the day that the Shays-Meehan bill was introduced, may put pressure on Congress to act on lobby reform legislation and provide more scrutiny of nonprofit activities. The report, which examined former lobbyist Jack Abramoff's relationship with six Indian tribes involved in gaming operations, notes that the tribes provided millions of dollars to Abramoff and to nonprofits at the suggestion of Abramoff and his partner, Michael Scanlon.

The report also examined the abuse of nonprofits by Abramoff and Scanlon for their personal financial gain. It cites numerous examples of Abramoff funneling money through nonprofit organizations such as the Abramoff-created Capital Athletic Foundation, or Grover Norquist's Americans for Tax Reform, leading the committee to question whether current Internal Revenue Service regulations regarding nonprofit organizations are sufficient.

The Committee, whose oversight is strictly focused on Indian Affairs, recommended that the Senate Finance Committee take up this issue. "The [Indian Affairs] Committee believes that the evidence it uncovered raises serious issues involving nonprofit organizations, not only with regard to compliance with existing federal revenue laws, but also with regard to whether existing federal revenue laws should be altered to prevent or discourage such activity," the report detailed.

Whether the Senate Finance Committee will take up the issue remains to be seen. Senate Finance Committee Chairman Charles Grassley (R-IA) has been conducting a broad probe of nonprofits and foundations, examining whether nonprofits have abused their tax-exempt status for political gains. This has included an examination of charities with link to Abramoff. The Indian Affairs Committee has sent over 100 pages of documents to Grassley that related to Abramoff-affiliated charities.

According to Sen. Max Baucus (D-MT), the ranking Democrat on the Finance Committee, "The Finance Committee continues to review documents provided by the Committee on Indian Affairs and related to non-profit groups with links to Jack Abramoff. This is being done as part of an ongoing, broad-scale look at whether tax-exempt groups are misused for financial or political gain. I expect that Finance Committee will act as our findings warrant."

Nonprofits Protest Barrier to Emailing Congress

A coalition of more than 100 nonprofits is protesting a new filter used by some congressional offices to block spam, arguing it also inhibits constituent communications. The filter, or

"logic puzzle" as it is called, requires senders to answer a question before a message is sent, making it more difficult for online advocacy campaigns that use forms.

A group of 105 organizations, spanning the ideological spectrum, have sent a letter to House and Senate congressional offices asking them to disable the so-called "logic puzzle", designed to stop email spam from reaching congressional email inboxes. The organizations, led by Consumers Union, National Taxpayers Union, and Earthjustice, argue that constituents should not be required to show a basic knowledge of math or English to express their concerns to their elected members of Congress.

"Congressional attempts to differentiate among constituent communications - accepting only unorganized communications but blocking communications where individuals are working together to deliver a strong message - raise dangerous questions about the infringement of constituents' First Amendment rights and are a disservice to constituents," according to the sign-on letter to Congress.

According congressional offices, the purpose of the program is to cut down on the amount of mass emails the offices receive daily. House offices currently can use Congress's 'Write Your Rep' service. In May the 'Write Your Rep' system added a filter to email communications, which typically involve a simple math problem. Under the new system, after a sender has already proven that he or she is a constituent of the member by providing his or her name and address, the sender is presented with a logic puzzle in order to prove the message is sent by a real person and not an email-generating program. House Administration Committee Spokesman Jon Brandt told *Roll Call* that 60 House offices use the logic puzzle, although one has discontinued its use. He also said "the committee is open to meeting with these groups to listen to their concerns..."

Rep. John Larson's (D-CT) office, which began using the logic puzzle last week, recently stated, "We were getting incredible amounts of email and a lot of it was from mass e-mails from some organization using technology to mask a grassroots campaign and it impaired our ability to communicate with constituents." On the decision to use the logic puzzle, Larson's spokesperson said, "It was a tough decision, because we obviously want to hear from our constituents. But we're limited in the amount of time and staff we have to answer some of these. I think Congress had to address this on a larger level."

The logic puzzle, which is also used by four Senate offices, is a response to a Congressional Management Foundation report that showed half of congressional staff surveyed believes identical e-mails are not sent with constituents' consent. The CMF study also showed that with the advent of the Internet and electronic communications, Congress received four times more communications in 2004 than in 1995. In 2004 the average office received over 200 million letters.

Many of the vendors that nonprofits use to organize their online grassroots communications

have already deployed a "work around" for the logic puzzle. According to the vendors, no email communications from constituents have been lost. At issue for the vendors is the fear that the initiation of the logic puzzle has begun a technology "arms race" with the House and Senate Information Resources Departments.

Since the anthrax attacks of 2001, regular mail to Congress goes through lengthy inspections before delivery, leaving email and fax as the most practical methods of reaching lawmakers. The coalition of nonprofits sees requiring constituents to answer any sort of question, regardless how simple, as another barrier to communicating with a Congress that is already difficult to reach.

An American Civil Liberties Union statement on the logic puzzle explained, "Congress long ago did away with the literacy test qualification to vote. Apparently, Members of Congress acknowledge you shouldn't have to pass a test to vote for them, but they don't want you to contact them without taking a quiz".

Nonprofits Sue Defense Dept. Over Surveillance

On June 14 the American Civil Liberties Union (ACLU) filed suit against the Department of Defense (DOD) on behalf if itself and six state affiliates over DOD's failure to respond to their Freedom of Information Act (FOIA) requests. The request seeks records DOD has collected on over two dozen groups critical of the administration's war policies.

On June 14 the American Civil Liberties Union (ACLU) filed suit against the Department of Defense (DOD) on behalf if itself and six state affiliates over DOD's failure to respond to their Freedom of Information Act (FOIA) requests. The request seeks records DOD has collected on over two dozen groups critical of the administration's war policies. With the ACLU of Montana and Pennsylvania recently filing FOIA requests seeking information on surveillance of peace groups in their states, requests have been filed for over 150 organizations and community leaders in 20 states in total.

The ACLU complaint was filed in the U.S. District Court for the Eastern District of Pennsylvania. The plaintiffs are the national ACLU and affiliates in Florida, Georgia, Rhode Island, Main, Pennsylvania and Washington. The FOIA requests sought information on DOD surveillance of local groups and leaders as well as the ACLU, the American Friends Service Committee, Greenpeace, Veterans for Peace, and United for Peace and Justice.

The FOIA requests were filed after it was revealed in February that since 2003 DOD had been collecting information on peace groups for a database known as the Threat and Local Observation Notice (TALON). DOD shared the information with other government agencies. In an ACLU statement, defense attorney Ben Wizner maintained, "The U.S. military should not be in the business of maintaining secret databases about lawful First Amendment

activities. It is an abuse of power and an abuse of trust for the military to play a role in monitoring critics of administration policies."

Still more state and local groups are requesting information on TALON surveillance and spying by other government agencies. The Jun. 8 FOIA request by the ACLU of Montana seeks information collected by DOD, and the Departments of Justice and Homeland Security about a number of groups, including the Helena Peace Seekers, Taking Action for Peaceful Solutions of Butte, and the environmental group Friends of the Bitterroot. The ACLU press release notes that more than 30 Pennsylvania organizations also filed FOIA requests on Jun. 14, because "they fear they may have been monitored because they have publicly opposed the war in Iraq."

FOIA requests previously filed by the ACLU have yielded interesting results. In May the ALCU released documents showing the FBI used counterterrorism resources for surveillance of the School of the Americas Watch, a Georgia-based group opposed to the U.S. Army School of the Americas, an institution known for training notorious Latin American dictators, including Manuel Noriega. The group conducts an annual vigil at Fort Benning, Georgia, where the school, now renamed the Western Hemisphere Institute for Security Cooperation, is located. The group's peaceful protests included acts of civil disobedience outside the fort, earning the group "priority" status for counterterrorism monitoring. An ACLU press release notes that "[c]learly the FBI knew it was spying on a peaceful demonstration, activity protected by the First Amendment."

Muslim Charity's Prosecution Reveals Questionable Evidence

Criminal prosecution of the Holy Land Foundation (HLF), a Texas-based Muslim charity shut down by the U.S. Treasury Department in 2001, has provided a glimpse into the government's use of evidence to justify seizure and freezing of charitable assets in the name of the war of terrorism. Pre-trial filings shows sanctions have been imposed against charities and their officials for contacting organizations that are *not* designated by the government as supporters of terrorism. The case also appears to depend on questionable foreign intelligence information and faulty translations.

In December 2001, the Treasury Department designated HLF as a supporter of terrorism, under authority granted in Executive Order 13222 and the PATRIOT Act. HLF was accused of funneling millions of dollars to Palestinian organizations allegedly controlled by Hamas, designated a terrorist organization in 1995, and of providing funds to families of suicide bombers. HLF officials denied the charge, saying the organization only provided humanitarian relief, with a focus on Palestinian refugees and victims of armed conflict in Bosnia, Kosovo, and Turkey. The FBI seized more than $5 million in assets and all of HLF's documents and property.

The organization's civil lawsuit seeking to overturn the designation was unsuccessful, owing mainly to the appeals court not allowing review of the Treasury Department's evidence and HLF beng unable to present evidence on its own behalf. In July 2004, HLF requested an investigation by the Department of Justice Inspector General, alleging the FBI used erroneous translations of sensitive Israeli intelligence material as the crux of its case. Later that day, the Justice Department unsealed an indictment against HLF and its seven top officials, charging them with money laundering and providing material support to Hamas. The case is scheduled for trial in February 2007.

In pre-trial filings in the criminal case, the prosecution disclosed it has 21 binders with over 8,000 pages of Israeli intelligence information, according to the *Los Angeles Times*. The Israeli government controls what prosecutors can reveal to the public. Earlier this year 14 volumes of classified material were released to defense attorneys by mistake, and the judge refused the prosecution's motion to compel return of the documents. Instead, they now sit in the judge's office. While defense attorneys are forbidden from commenting on the contents of the files, the *Dallas Morning News* reported that "the information bolstered their case."

The FBI documents rely on the Israeli material to establish two claims central to the prosecution: grants were made to local charities that support Hamas, and funds were earmarked for families of suicide bombers. HLF grants to local charities, known as "zakat committees," supported a wide variety of activities, including hospitals. Zakat committees are grassroots traditional organizations that identify people in need and distribute charitable funds. None of the zakat committees named in the indictment have been designated as supporters of terrorism by the Treasury or State Departments.

The FBI claim is apparently based on a FBI memo that quotes the manager of HLF's Jerusalem office as saying the money was "channeled to Hamas." However, HLF attorneys say the Arabic to Hebrew to English translation should correctly say there is "no connection."

The indictment also claims that funds were earmarked for families of suicide bombers, but the allegations are based on faulty translations and incorrect use of the term "martyr," according to the defense. In the Middle East, defense attorneys explain, the term "martyr" refers to a broad category of people who die an early and unnatural death, not just suicide bombers.

The *Los Angeles Times* review of about 400 photos in an "orphans book" the FBI seized from HLF shows that 69 were identified as children of "martyrs." According to a sworn statement by the former head of HLF's office in Gaza, who interviewed all 69 families, only four died making bombs and 12 were killed by Israeli troops. Eight were killed by Palestinians for allegedly collaborating with Israel. The remaining "martyrs" were victims of robberies, heart attacks, accidents and other non-political deaths.

As the criminal prosecution moves forward charities will have an opportunity to see whether secret, unchallenged evidence used to shut down charities can withstand the rigors of the rules of evidence and due process under American law. Whether charities can rely on government watch lists to identify people and groups they should avoid will be at the forefront, as the government tries to send HLF's leaders to prison for assisting non-listed groups.

Sunset Commission Update: Delay in House, Rush in Senate

While House leadership announced that sunset commissions would come up for a vote later than initially predicted, the Senate unexpectedly set the stage for its own consideration of a sunset commission proposal.

OMB Watch reported conflicting accounts two weeks ago about the timing for unveiling, and bringing to a vote, a final House package on sunset commissions. At the time, House GOP leadership suggested that a vote could happen imminently, while Hill sources speculated that leadership was being overly optimistic.

The latter proved to be the case. According to BNA's subscription-only *Daily Report for Executives*, the negotiations over a final proposal continued on several important details -- including whether the Department of Defense would be exempted from the sunset commission's purview.

Now, House leaders report that a House bill will come up for a vote in the first couple of weeks after Congress's July 4 recess.

Meanwhile, the Senate unexpectedly moved forward with its own sunset commission proposal. Sen. Judd Gregg (R-NH), chairman of the Budget Committee, unveiled the "Stop Over Spending Act" (S. 3521), a potpourri of budget process reforms with features that include attacks on entitlements, a line-item veto, and a sunset commission.

The Gregg sunset commission language is similar in most respects to the proposals developed by Rep. Todd Tiahrt (R-KS) and Sen. Sam Brownback (R-KS), the chief differences being:

- no exemptions for the Department of Defense, entitlement programs, or any other programs;
- charging the commission to produce four separate reviews and recommendations, each covering 25% of the federal programs in question; and
- adjusting the language from the Tiahrt/Brownback bills that would codify White House performance appraisals by acknowledging performance indicators that cannot

easily be measured.

Click here for a quick overview of the sunset commission proposal in the Gregg bill.

The Senate Budget Committee reported out the bill on a party line vote, with Democratic members offering what they called the "Do Your Job Amendment," to underscore the fact that the commission called for in the bill would usurp Congress's rightful role and responsibility for oversight. The amendment was rejected.

Prospects for the Gregg bill are uncertain, although reports are trickling out that Senate Majority Leader Bill Frist (R-TN) may be considering a variety of options, including breaking the Gregg bill into separate pieces, and that House GOP leadership has expressed interest in the concepts in Gregg's bill.

Because of these separate developments, public interest groups across the country made an early show of force by sending an opposition statement to each chamber, signed by 278 national, state, and local organizations.

Measures to Reform Budget Process Move in Congress

Both chambers of Congress are moving forward on measures centered around budget process changes, with a focus on giving the president line-item veto authority. The House passed the Legislative Line Item Veto Act (H.R. 4890) 247-172 on Jun. 22, and the Senate Budget Committee reported out a broader budget reform bill on Jun. 21 that included presidential line-item rescission authority.

The Senate bill, called the Stop Over Spending Act (S. 3521), also includes:

- Caps on discretionary spending for three years that would likely force large domestic discretionary spending cuts unless they are ignored (as has been the case in supporting the wars in Iraq and Afghanistan);
- Revival of the Gramm-Rudman-Hollings automatic across-the-board spending cuts when the deficit hits a certain percentage of GDP. This provision would once make Social Security “on-budget,” meaning its surplus would be counted when calculating the deficit. Thus, Social Security would once again mask the true size of the deficit and paying for general government operations;
- Establishment of two non-elected commissions to review federal programs, including entitlement programs, that could transform or eliminate virtually any program in government;
- A move towards biennial budgeting; and
- Changes to the budget process that would reduce transparency.

Neither bill includes what many feel are necessary, common-sense budget process reforms (e.g. the restoration of PAYGO rules that would apply equally to spending and taxes). Senate Democrats have suggested additional budget reforms not currently being considered, such as including the cost of war instead of paying for it through supplemental spending bills. Many have supported using the reconciliation process, which is how the Bush administration has successfully enacted most of its big tax cuts, *only* for deficit reduction. Democrats have also called for keeping Social Security off-budget to protect the trust fund.

With so many controversial provisions, the Senate bill's fate is uncertain. If Senate Majority Leader Bill Frist (R-TN) decides to break the bill up, it seems almost certain that the first issue to be debated will be the line-item veto. That debate will undoubtedly be contentious with most Democrats opposed to handing over such authority and increasing the executive branch's "power of the purse."

Back From the Dead: Estate Tax "Compromise" Could Move in Senate Soon

The House voted last week to approve an estate tax "compromise" that is, in reality, backdoor repeal of the tax. The vote clears the way for another Senate vote on the estate tax, following the Senate's rejection of repeal earlier this month.

On June 8, the Senate rejected a motion to proceed on debate for full repeal of the estate tax. Given the Senate was at least three votes short of proceeding with permanent repeal, Senate Majority Leader Bill Frist (R-TN) felt it was time to move on estate tax "reform." Since tax bills must come from the House, Frist asked GOP leaders there and House Ways and Means Chair Bill Thomas (R-CA) to move a "reform" bill in the House that could then be taken up in the Senate before the July 4 recess.

Thomas flew into action, moving the Permanent Estate Tax Relief Act (H.R. 5638). The bill would increase the exemption level, under which no estate tax is paid, to $10 million for couples ($5 million for individuals). Estates valued between $5 million and $25 million would be taxed at the capital gains rate, currently 15 percent; estates worth more than $25 million would be taxed at double the capital gains rate or 30 percent.

During debate over the bill, Thomas made it clear that this was not a bill on which the House was willing to negotiate in conference. Instead, he repeatedly said this bill must be passed by the Senate in the form that the House passes —a take-or-leave-it bill. This emphasis may have been necessary in order to garner the support of a number of House conservatives that initially did not want to vote on anything but permanent repeal. Even though this “reform” effort is nearly just as expensive as permanent repeal (total repeal costs around $1 trillion; this would cost about $823 billion), some conservatives found compromise to be a bitter pill to swallow. Conservative advocacy groups were split on whether to support reform over

repeal, sending conflicting messages on the new strategy. They were particularly concerned with linking the estate tax rate to the capital gains rate, a rate that would go up if current tax cuts are not extended.

Nonetheless, the Thomas bill passed handily in the House. Surprisingly, however, its final vote was nearly identical to the House vote on permanent repeal. In other words, this type of reform, which is repeal in all but name, did not change the political dynamic. Forty-three Democrats voted with all but two Republicans in the 269-156 vote. This was roughly the same vote as on permanent repeal in the House.

Recognizing that this "reform" bill is less than a meaningful compromise, Thomas added a sweetener to the bill in hopes of garnering additional Senate votes. He added a timber tax break supported by the timber industry an important political force in Washington, Louisiana, and Arkansas -- key states in the Senate vote on the estate tax. The timber tax break would allow timber companies to subtract 60 percent of their tree-cutting income from tax. The provision, which would cost $940 million, would last two years and then sunset unless renewed. Citizen for Tax Justice developed a summary of the tax break and noted that a company with a healthy profit from its paper sales could avoid taxes all together.

Cost of the Permanent Estate Tax Relief Act

According to the congressional Joint Committee on Taxation, the total cost is roughly 80 percent of permanent repeal, depending on assumptions used:

- It costs $279 billion over the next 10 years.
- Between 2012 and 2021, the first full 10 years, it will cost $602 billion and another $160 billion for interest — a total of $762 billion
- If you assume the capital gains 15% tax rate is extended (it is currently scheduled to expire), then the 10-year cost is $823 billion.

  Full repeal of the estate tax is around $1 trillion over the first full 10 year period.

So now the action turns to the Senate, where Frist took procedural steps to bring the House bill up this week. Late this afternoon, however, Frist announced there would be no vote on the bill before the July 4 recess. A number of observers believe that the surprising development could only mean that Frist still lacks the 60 votes needed to proceed with debate. Sen. Ron Wyden (D-OR), who has shifted from supporting repeal of the estate tax to

wanting reasonable reform, noted that a bill that comes in at three-quarters or 80 percent of the full cost of repeal will be a tough case to make. Wyden told reporters last week, "I get the sense, for swing senators, anything that is upwards of 50 percent of the cost is a great leap."

Nonetheless, there is enormous pressure on a handful of Democratic senators to switch

their votes, particular Maria Cantwell (WA), Patty Murray (WA), Mary Landrieu (LA), Mark Pryor

(AR), and Ken Salazar (CO). At the same time, the compromise could lose some Republican votes, including Trent Lott (R-MS) and Jeff Sessions (R-AL), who have been outspokenly determined to see no less than full repeal.

Sessions recently stated, "If a compromise does not really eliminate the confiscation that occurs then I'm not sure that I'm supportive of it. And some of the things I'm hearing probably are not sufficient to satisfy my thoughts."

If Frist again fails to find his 60 votes, he can try to ram the House bill through the Senate by attaching it to important legislation as part of the conference report. The only way to stop it then would be to vote against the whole bill, including the important legislation.

House Passes Half-Hearted Disclosure Bill, Alternative Remains Popular in Senate

The House passed legislation last week that would provide for a free, searchable database to disclose information about government grants. H.R. 5060 sponsored by Reps. Roy Blunt (R-MO) and Tom Davis (R-VA) passed the House on a voice vote on June 21, under suspension of the rules. The bill does not address disclosure of federal contracts, which accounted for some $339.7 billion in federal spending in 2004 alone.

Meanwhile, a Senate bipartisan bill to create transparency for both grants and contracts, The Federal Funding Accountability and Transparency Act, continues to enjoy bipartisan support. Its sponsors, Sens. Tom Coburn (R-OK), Barack Obama (D-IL), Tom Carper (D-DE), and John McCain (R-AZ), are working closely with OMB and other stakeholders to create a meaningful alternative to the Blunt bill. Coburn expects to hold a hearing on the bill some time this summer in his Federal Financial Management, Government Information and International Security Subcommittee.

OMB Watch has made available on its website analyses of the House grants disclosure bill and the Federal Funding Accountability and Transparency Act.

Congress Drops the Ball on Minimum Wage Again

Congress failed last week to raise the federal minimum wage which has stagnated for nearly a decade. The failure to act means its unlikely American workers will see a minimum wage increase any time soon. In the Senate, two measures to raise the minimum wage were voted down. In the House, an appropriations bill that contains a minimum wage increase is being

kept from the floor, and Republicans have simultaneously rebuffed a Democratic effort to link an increase in the minimum wage with a bill that would nearly repeal the estate tax.

In the Senate, two amendments to the Defense Appropriations Bill were defeated that would have raised the minimum wage. Sen. Edward Kennedy (D-MA) offered an amendment that would have raised the minimum wage from the current $5.15 to $7.25 over two years: it would have gone from $5.15 to $5.85 beginning 60 days after the legislation was enacted; to $6.55 one year later; and to $7.25 a year after that. The amendment, which needed 60 votes for passage, was defeated 52-46 on Jun. 21.

The other amendment, offered by Sen. Mike Enzi (R-WY), would have increased the minimum wage to $6.25 over 18 months and was bundled with a number of other provisions affecting the Fair Labor Standards Act. The amendment was defeated 52-46 and again failed to garner the requisite 60 votes.

In the House, Minority Whip Steny H. Hoyer (D-MD) succeeded in attaching a minimum wage hike to the Labor, HHS, and Education Appropriations Bill when his amendment was adopted by the House Appropriations Committee on a 32-27 vote. Because Republican leaders in the House are unsure if they can successfully remove the amendment on the floor, however, House Majority Leader John Boehner (R-OH) is blocking the bill from coming to a floor vote.

Democrats also attempted various parliamentary tricks to add a minimum wage increase to a bill that "reforms" the estate tax, a tax on super-wealthy estates. In each maneuver, Boehner and the GOP majority thwarted them.

In contrast to the GOP leadership, the American public overwhelmingly favors a minimum wage increase. In fact, most Americans would be more likely to vote for a Congressional candidate who favors increasing the minimum wage.

It's easy to understand why a majority of Americans would like to see an increase in the minimum wage. According to a Center on Budget and Policy Priorities analysis:

- The federal minimum wage has remained at $5.15 for nine years.
- Since its last increase in 1997, the minimum wage has lost 20 percent of its value.
- The minimum wage is at its lowest level in terms of purchasing power in fifty years.
- At 31 percent, the minimum wage is at its lowest as a share of the average American wage since 1947.
- It takes a full day of work for a minimum-wage worker to buy a tank of gas.

Figure 1: Real value of the federal minimum wage, 1950-2004

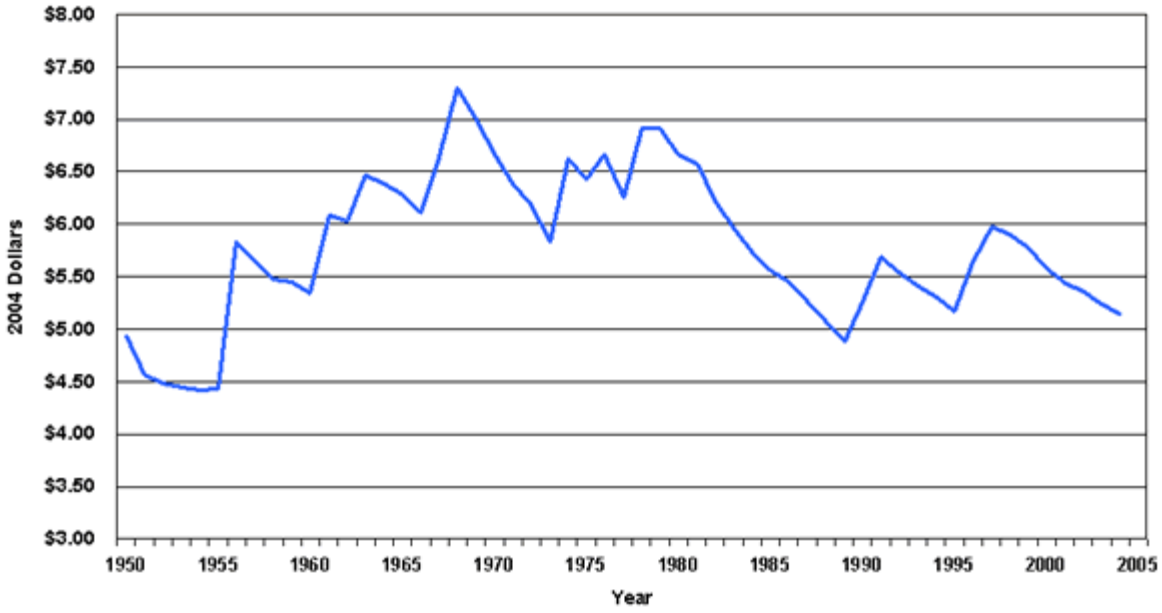

Chart courtesy of the Economic Policy Committee

House Saves Program for Measuring Results of Government Assistance

The House voted Jun. 13 to partially fund the Census Bureau's Survey of Income and Program Participation (SIPP), saving what is considered an essential tool for assessing how well government assistance programs are working.

The President's FY2007 budget omitted funding for the program, but Rep. José Serrano (D-NY) succeeded in gaining approval for partial funding in the FY2007 Science, State, Justice and Commerce Appropriations Bill. The Serrano amendment calls for $10 million for the program, falling about $30 million short of full funding, but, thanks to Serrano, the SIPP is on a path to moderate preservation.

The program, which began in 1984, gauges how well, or how poorly, government assistance programs deliver on their promises, by providing comprehensive information about such programs, and the people they are designed to help. The Census Bureau initiated the SIPP to "collect source and amount of income, labor force information, program participation and eligibility data, and general demographic characteristics to measure the effectiveness of existing federal, state, and local programs."

The SIPP data collection program is unique in that it provides access to information not only on program participation, but also data on income, wealth, and various other measures of

economic wellbeing. The SIPP is considered a superior data set because, unlike similar government income surveys, it tracks the same families over a period of two to four years. It produces a much clearer picture of how American families are progressing.

The SIPP has proven to be an invaluable tool for policy makers. Its' unrivaled scope and depth of data have enabled government program managers, researchers, journalists, and politicians to better evaluate and judge government programs. The SIPP has provided insight into areas of American economic and social concerns such as health insurance coverage rates, immigration, unemployment and pensions, welfare reform effects, the Food Stamp Program, and poverty rates.

With the House having decided to at least partially fund the SIPP, it is now up to the Senate to save the program as it takes up its Science, State, Justice and Commerce Appropriations Bill.