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Education in the U.S. Leaves Many Children Behind

A number of reports have been issued recently revealing cuts for next year in federal spending for education, including Pell Grants for college students, adult and vocational education, and Head Start, and ongoing inadequate funding for the Bush "No Child Left Behind" Act and special education.

The National Priorities Project released *Federal Education Funding Falls Short* that provides information about education spending in each of the 50 states. The Center for American Progress released *Education: Many Children Left Behind* in April revealing that 7,000 school districts across the nation face significant cuts in federal funding for helping disadvantaged students.

Economy and Jobs Watch: Mid-year Update

Halfway through 2004 seems a good time to review where the United States is on the economy and jobs situation.

- Unemployment has remained at 5.6 or 5.7 percent since the beginning of the year. Over the past six months, employment growth has moved solidly into positive territory, but not enough to put a major dent into unemployment. The labor market continues to remain well below peak levels.
- Gross Domestic Product grew at a revised 3.9 percent annual rate in the first quarter of 2004, down from the original estimate of 4.5 percent. While growth in overall economic output appears to have largely recovered, risks remain to the overall economy -- especially due to increases in oil and gas prices, as well as an up-tick in inflation, now running at about 3 percent.
- The recent growth, however, has not been beneficial to many workers. As a share of total output corporate profits are at record highs, while labor compensation is at 38-year lows.
- The Federal Reserve Board of Governors' Federal Open Market Committee (FOMC) is meeting in the next few days to decide the course of monetary policy. While interest rates have remained at historic lows for a significant amount of time, it is widely expected that the FOMC will decide to raise interest rates by at least a quarter of a percentage point, and perhaps half a percentage point. This shift in policy will likely be the first in a series of moves to launch a preemptive attack on increasing inflation, which as noted has begun to tick upward in recent months.
- It appears that recent legislative attempts to graft expansion of the debt ceiling on the defense authorization bill have failed. Congress will have to revisit the debt ceiling issue, as total borrowing will cause the government to reach the statutory limit later in the summer or fall. In addition, recent remarks by Fed Governor Edward Gramlich cited the recent increase in the deficit -- now around \$500 billion per year -- as a potential drag on the economy.

A final tidbit: As highlighted by Lewis Black on *The Daily Show* with Jon Stewart [[Link -- click on Reagonomics video](#)] -- The head of the Ronald Reagan Legacy Project and ubiquitous conservative Grover Norquist recently argued on CNN that Reagan ought to replace Hamilton on the \$100 bill, in part since Hamilton is "of all the people on the currency, the only one who isn't a president." As Black delicately responded: "I'll bet you \$100 that you're wrong."



Good Riddance to Bad Policy: Budget Enforcement Bill Dies

A conservative effort to severely limit domestic programs was soundly defeated in the House last week. The so-called "Spending Control Act of 2004" failed by a vote of 146-268.

The bill would have placed severe caps on discretionary programs. In addition, it would have reinstated a modified, unbalanced "PayGo" rule that would have required offsets for entitlement program expansion, but not for tax cuts.

For more information, see:

- OMB Watch [Proposed Changes Would Create Unbalanced, Flawed Budget Process](#)
- The Center on Budget and Policy Priorities' [Issue in Depth: Proposed Changes in Budget Rules](#).

Tax and Spend?

In an effort to restore spending in ten critical areas and lower the deficit, Rep. David Obey (D-WI) offered a resolution (H. Res. 685) on Thursday, June 24, to invest \$14.2 billion in key domestic priorities and \$4.7 billion towards reducing the deficit. The total \$18.9 billion would be fully offset by limiting tax breaks to those making over \$1 million a year.

Republicans gleefully allowed consideration of Obey's amendment in order to bring out their worn "tax-and-spend-Democrats" cry. As predicted, the bill was defeated, mostly along party lines, by a straight up-or-down vote of 184 to 230. Two Republicans supported the bill, and 17 Democrats voted against it.

A tight budget cap, with most of the increases flowing into military spending and homeland security, will require cuts in many of the other things that government does on the domestic front. In addition, the national debt will reach the statutory "debt ceiling" sometime this summer, forcing Congress to raise the debt limit yet again. In addition to reducing the deficit (thus keeping the national debt from growing), Obey's amendment would have provided additional spending for a number of the priorities that many Americans strongly support like education, health care for children and public health, veterans' benefits, homeland security, conservation and clean water, strengthening rural communities, and restoring cuts to the Community Services Block Grant. The tax increase on millionaires would have reduced the average tax break from \$120,000 to \$24,000, which, according to Obey, would still be 24 times larger than tax breaks for those making \$50,000 a year.

Obey's amendment was about fairer taxes that will support important government services -- for veterans, for children's health, for education, and for assistance to low-income families and rural communities -- by allowing them to grow with inflation and population increases, and reducing the deficit. Hardly "tax-and-spend," though it might be termed "tax-millionaires-fairly-and-don't cut."

Appropriations Still Unknown

The appropriations process for FY 2005 doesn't lend itself well to periodic updates on which bills have been passed and who the winners and losers are. No one is even pretending that the House and Senate will debate and pass any of the 13 separate appropriations bills, or reconcile the two versions in conference -- the normal budget process. Rather, it has been clear from the start that an impossibly tight budget in an election year will dictate the process.

Appropriations for FY 2005 will be accomplished through either a huge omnibus bill with most of the appropriations (excluding defense) included, or several "mini-buses" each containing a few appropriations. Those appear to be the only kind of vehicles that can move this election year.

Does it matter? With everything else going on, is a broken budget process worth worrying about? Well, yes. The budget is how the nation's priorities get determined -- whether you are concerned about the arts, the environment, human needs, children, education, or anything else that receives federal funding. As is often the case, the process has a lot to do with the resulting substance. In past years, omnibus bills were the final resort at the last minute to avoid more continuing resolutions or a government shutdown -- this year they are the premise from which everyone is starting.

To say this year's budget process lacks transparency -- lumping a bunch of appropriations together and passing them on the basis of negotiations that occur mostly behind closed doors -- is an understatement. Many of us will have no idea what is in the bills until after they are passed (and many in Congress who are voting on them won't either). Bad provisions can more easily get stuck in at the last minute. There will be little opportunity to lobby for or against specific spending cuts before House or Senate votes, unless you are already on the inside. Even beyond that, a flawed budget process under too-tight constraints can actually lead to more -- rather than less -- spending, both because there is no transparency, and because the process becomes so irrational and unwieldy. The budget process becomes very closed, incoherent, and even, some would conclude, undemocratic, especially since it will tilt control to the president, who can shape the package.

Without reasonable levels for spending -- levels that take into account the cost of inflation and population growth and that adequately support the services that citizens want and deserve -- a rational budget based on short- and long-term needs and priorities becomes impossible. A good budget requires reasonable revenue from the taxes we pay to support the myriad things government does for each of us -- many of which we take so much for granted they have become invisible. Until then, we can look forward to less and less transparency in what may be the most important activity of government, and one in which its citizens and future generations have a huge stake -- passing a budget.

Congress Mulls Secrecy on Several Fronts

Those who care about American's right to know would do well to keep eyes peeled on recent congressional action. Proposals to amend the USA Patriot Act and spending bills are at the center of congressional debate over openness in government.

In that debate, which pits the doctrine of reauthorization of federalism against the government's penchant for secrecy, the Senate added a provision to a \$350 billion transportation bill (H.R. 3550) that would preempt state and local sunshine laws in order to mandate secrecy about public safety problems in aviation, rail and other transportation systems.

The administration-sponsored secrecy provisions expand already broad powers granted to the Transportation Security Administration to define problems potentially harming public safety as "sensitive security information" that should be kept from the press and public. The preemption language is not included in the version of H.R. 3550 that the House passed. The differences will be negotiated in conference.

Congress also saw action on several bills that would amend the Patriot Act. Through the efforts of many including the Rights Working Group, an affiliation of public interest groups against the Patriot Act, the Civil Liberties Restoration Act 2004 (S. 2528) was introduced on June 16. The bill would end secret hearings, ensure due process for detained individuals, limit secret seizures of records, and limit the use of secret evidence.

In a closed session on June 16, the Senate Select Committee on Intelligence was scheduled to consider attaching a bill (H.R. 3179) to the intelligence authorization bill that would have expanded the use of secret evidence in court cases and strengthened penalties for violating Patriot Act gag orders. In what may be a modest and temporary win -- but a win nonetheless -- for civil liberties and open government advocates, the Intelligence Committee kept the controversial language out of the intelligence authorization bill, although proponents may try adding H.R. 3179 to the must-pass intelligence bill as a floor amendment in the Senate.

And several weeks ago, ten senators quietly introduced a bill, S. 2476, which would make permanent the controversial provisions of the Patriot Act scheduled to sunset next year. The bill is referred to the Committee on the Judiciary.

Finally, by a vote of 54 to 39 the Senate upheld a ban on media coverage of fallen soldiers' flag-draped coffins returning to the U.S.

More updates and links to more information about these events can be found at www.openthegovernment.org

State Department Releases New Terrorism Death Count, Corrects Flawed Data

The State Department released drastically higher numbers for terrorism-related deaths June 22, after the administration used the original April report to claim the war on terrorism is succeeding. Government officials cited outdated computers and personnel shortages as the reasons for the flawed data, according to the Washington Post.

The revised report identifies 625 deaths from terrorist attacks, more than double the original report's number of 307. The 1,593 injuries jumped to 3,646, "significant" incidents went up by five, and all incidents increased from 190 to 208.

Rep. Henry Waxman (D-CA) sent a letter May 17 to Secretary of State Colin Powell, pointing out the skewed data and questioning the report's integrity. The State Department acknowledged its inaccurate numbers June 10.

A spokesman for Sen. John Kerry (D-MA) claims the correction is "just the latest example of an administration playing fast and loose with the truth when it comes to the war on terror." The administration argues that the inaccurate report resulted from technical glitches and budget shortfalls. Once it knew of the errors, the administration corrected the report.

Before this year, the CIA compiled statistics on terrorist attacks. In 2003, President Bush transferred this duty to

the Terrorist Threat Integration Center in order to produce more efficient and comprehensive reports on terrorism. By producing such flawed data for the global terror report, the new center does not seem to be fulfilling expectations.

FBI Used Controversial Patriot Act Provision

The FBI applied to use a section of the USA Patriot Act less than a month after Attorney General John Ashcroft stated it had never been used, [according to new documents](#). Section 215 allows the government to track the public's reading habits in bookstores and libraries and seize an organization's computers, files and "any material thing" as part of an ongoing investigation.

The [American Civil Liberties Union \(ACLU\)](#), the [Electronic Privacy Information Center](#), the [American Booksellers Foundation for Free Expression](#) and the [Freedom to Read Foundation](#) submitted a [Freedom of Information Act \(FOIA\) request](#) last October, regarding the government's use of the Patriot Act. After the FBI refused to release the documents through administrative mechanisms, a U.S. District Court judge overturned the FBI's decision to withhold the documents. Additional documents will be released over the course of the next month.

Among the records released are:

- An October 15, 2003 [FBI memorandum](#) indicating that the FBI submitted an application for an order under Section 215.
- An e-mail message acknowledging that Section 215 can be used to obtain physical objects such as apartment keys, in addition to records. The Attorney General previously acknowledged that Section 215 can be used to obtain computer files and even genetic information.
- An internal FBI memo, dated October 29, 2003, stating that Section 215 of the Patriot Act can be used to obtain information about innocent people.

Additional Resources:

[Patriot FOIA page](#) by ACLU.

["Ashcroft Declassifies Use of a Patriot Act Power"](#) by OMB Watch.

[Patriot Act resource page](#) by OpenTheGovernment.org.

DHS Seeks Exemptions From Public Disclosure Requirements

The [Department of Homeland Security \(DHS\)](#) is looking to hide Environmental Impact Statements (EIS), partially or in whole, from public disclosure. A [June 14 directive](#) published in the Federal Register would exempt the agency from a number of requirements under the [National Environmental Policy Act \(NEPA\)](#).

The directive applies to all agencies within DHS including the Transportation Security Administration, Energy Security and Assurance Program, Federal Emergency Management Agency, and the Coast Guard. DHS and its agencies deal with emergencies such as floods or oil spills, conduct research in science and technologies, and provide transportation services for hazardous waste.

Under NEPA, federal agencies must consider the environmental impacts of proposed actions through the development of an Environmental Impact Statement. The public, as an affected stakeholder, plays a vital role in the developments of EIS and related analyses for any actions occurring in their communities.

The DHS directive would hide information that is "classified, protected, proprietary, or other information that is exempted from disclosure by the Freedom of Information Act ..., critical infrastructure information ..., sensitive security information ..., and the DHS Management Directive 11042, 'Safeguarding Sensitive But Unclassified (For Official Use Only) Information'." This could include any EIS or its supporting analyses.

While it is understandable that classified and proprietary information, or information sincerely vital to national security should sometimes remain secret, a blanket exemption like this is prone to abuse and would hide vast amounts of environmental information. Many of the categories of information DHS cites are new and poorly defined. Information that industry or the government does not want publicly available can be easily categorized

under one of these exemptions.

DHS claims that it will move any protected information from documents to an appendix for decision makers only; the public could review all other parts of information generated under NEPA. However, "if segregation would leave essentially meaningless material, the DHS elements will withhold the entire NEPA analysis from the public." DHS might render analysis "meaningless", but the public could find the information extremely useful. There are no procedures contained in the directive for how DHS will determine which pieces of environmental analysis to remove if it falls within an exemption, or how it will determine if the public finds the information meaningful.

This directive is open for public comment until July 14.

Additional Resources:
[SEJ WatchDog Tipsheet](#)

Court Rejects Claim in First Decision on Data Quality Act

In the first ever court decision to address the Data Quality Act, a federal district court in Minnesota has held that the Act does not permit petitioners to seek judicial review.

The DQA issue was just one of many complaints targeting the plans of the Army Corps of Engineers and the Fish and Wildlife Service for management of the Missouri River. Several different causes of action were consolidated by the Judicial Panel on Multidistrict Litigation and referred to the U.S. District Court for the District of Montana. The resulting 51-page opinion disposed of the entirety of the case by granting the government's motions for summary judgment. Although the DQA issue received a scant page of discussion, it remains significant nonetheless as the first court decision to address the DQA.

[See full story and DQA background](#)

NPAction.org Announces A New Web Resource to Aid Nonprofits

Nonprofits Can Help America Vote! Announcing a new web resource dedicated to giving nonprofits the tools they need.

Congress passed the Help America Vote Act in response to voting problems in the 2000 election. With electronic voting provisions getting all the news coverage, the public is unaware of other new procedures mandated by the Help America Vote Act.

Nonprofits are the public's best source of nonpartisan information about candidates and voting procedures. You can help set the stage for greater civic participation - get ideas at www.npaction.org/helpUSvote!

For example, nonprofits can:

- help get their constituents registered
- educate them about the new laws (such a provisional balloting)
- assist at the polls or become a poll watcher
- sponsor candidate debates and forums.

Stop by www.npaction.org/helpUSvote and see how you can help with elections. While you're there learn about legal rules and how to continue your advocacy activities in an election season.

Add our web sticker to your site for easy access to the Nonprofits Can Help America Vote web resource. [Get the code.](#)

Report Says Economic Disparities Deny Many Americans a Political Voice

The American Political Science Association released a report this month, warning that democracy in the United States faces profound threats because "disparities of income, wealth and access to opportunity are growing more sharply in the United States than in many other nations, and gaps between races and ethnic groups persist."

The report, American Democracy in an Age of Rising Inequality, was brought together after nearly two years of research by the Association's Task Force on Inequality and American Democracy. The nonpartisan Task Force included scholars from around the country. Among the Task Force's findings based on analysis of the U.S. economy, voting and other forms of political participation, and government policy making:

- The United States has, in effect, 2 classes of citizenship: Wealthier Americans are far more active across the board -- from voting to contacting government officials and joining pressure groups in Washington -- than are those with lower incomes.
- Both major political parties target many of their resources on recruiting those who are already the most privileged and involved.
- The Internet, which offers opportunities for virtual political participation and communication among citizens, may actually be reinforcing existing inequalities because it is more accessible to affluent, non-Hispanic whites, and the highly educated.

[Download the full report.](#)

Senate Finance Committee Holds Hearing on Nonprofits

Three panels of witnesses testified before the Senate Finance Committee on June 22, addressing a wide range of issues on governance, accountability and enforcement of tax laws. Committee Chair Charles Grassley (R-IA) said he expects to introduce comprehensive legislation on these issues in the fall, but that some proposals may move separately and possibly sooner. He said the hearing was the beginning of a dialog with the nonprofit sector, and that more hearings may follow.

The Finance Committee held the hearing in response to scandals involving well-known charities like United Way and The Nature Conservancy, as well as abuse of charitable deductions by donors using tax shelters and other schemes. Internal Revenue Service (IRS) Commissioner Mark Everson's testimony described the growth in the nonprofit sector, the need for "enhanced governance" of tax-exempt organizations and various schemes by taxable individuals or corporations to avoid taxes through questionable donations.

Everson said there are about 3 million tax-exempt organizations, including nearly 1 million charities and 1 million employee plans, with the remainder including everything from local governments to business leagues. He urged the Committee to support the President's proposed 4.8 percent budget increase for the IRS, which would be "used to restore and reinvigorate our enforcement presence." He described current enforcement initiatives, including:

- Beginning this summer, a project to "explore the seemingly high compensation paid" to some nonprofit employees, contacting hundreds of organizations of different sizes to get "detailed information and supporting documents on their compensation practices and procedures." The goal is to help identify problem areas for the IRS examination program.
- A study of different categories of private foundations, focusing on about 400 foundations to "gauge its compliance with the tax laws."
- Greater coordination with state governments, the Federal Trade Commission and the U.S. Postal Service.
- Revising the application for tax-exempt status (Form 1023) by the end of the year, to include questions on compensation, governance, and conflict-of-interest policies. A sample conflict of interest policy is being developed in conjunction with this effort.
- Publish a plain-language brochure in the fall with sample best practices in good governance, ethics and internal oversight.

Much of Everson's testimony discussed donors claiming charitable deductions for "abusive" financial transactions, describing several schemes in detail. There were two anonymous witnesses, sitting behind a screen and talking through voice modification machines. One described how deductions for vehicle donations often exceed the sale price going to the charity. The other described how a low-income homeownership program diverted millions to its founders.

Sen. Charles Grassley (R-IA) said specific legislation dealing with donation abuses may be introduced in the fall, and could be used to offset the cost of other tax measures, such as extending the \$1,000 child tax credit, elimination of the "marriage penalty" and expansion of the 10-percent tax bracket. For example, legislation-tightening rules of deductions of intellectual property have passed in the Senate and the House Ways and Means Committee and there are proposals to limit deductions for car donations.

Witnesses from the nonprofit sector -- Diana Aviv of Independent Sector, Rick Cohen of the National Committee for Responsive Philanthropy and Art Taylor of the Wise Giving alliance -- all urged greater disclosure. NCRP has released a [statement](#) calling for increased accountability, which includes issues addressing self-dealing and compensation of foundation trustees, imposing payout requirements, donor-advised funds, and more. funds and more.

The day before the hearing committee staff issued a report with proposals for reform in governance, conflicts of interest, grant-making, federal-state coordination, reporting and disclosure, boards of director responsibilities, best practices and funding for enforcement. (See [summary](#) for details.)

- [Staff Discussion Draft: Tax Exempt Governance Proposals](#)
- [Hearing Panel and Grassley and Baucus statements](#)
- [Diana Aviv testimony](#)
- [Rick Cohen testimony](#)

Implementing Electioneering Communications Gets Complicated

With the party conventions and fall election getting closer, the Federal Election Commission (FEC) has published a [brochure](#) that explains restrictions on paid broadcasts that mention federal candidates 30 days before a primary or party convention and 60 days before a general election. This is the first election implementing the "electioneering communications" rule, which passed as part of the Bipartisan Campaign Reform Act of 2002 (BCRA). FEC regulations exempt 501(c)(3) organizations and unpaid broadcasts. The rule has raised new questions for the FEC on how it must be applied, including public service announcements where federal candidate appear, the breadth of the news exemption and advertising for Michael Moore's new film *Fahrenheit 9/11*.

In [Advisory Opinion 2004-14](#) the FEC ruled that Rep. Tom Davis (R-VA) *can* appear in a public service announcement broadcast within the blackout period, because the airtime for the announcement is free and the message is a permissible fundraising for a charitable organization. Davis is promoting the Kidney Foundation's Cadillac Invitational Golf Tournament, which will be held in his district.

The National Rifle Association (NRA) is testing the breadth of the media exemption to the electioneering communications rule by launching a radio program that includes attacks on Sen. John Kerry (D-MA) for his voting record on gun issues and disputes his fitness to be commander-in-chief. The NRA began broadcasting its three-hour news program June 17 on Sirius satellite radio. The show reaches 400,000 listeners, many in swing states, between 2 and 5 p.m. and repeats the following morning between 6 and 9 a.m. on Right Channel 142.

The NRA show raises questions about what types of communications qualify for the media exemption, and FEC definitions of what constitutes a "news story, commentary or editorial broadcast." The exemption does not apply if the broadcaster is controlled by a political party, candidate or political committee regulated by the FEC. In particular, there are factual questions about whether or not the NRA's control of the show takes it out of the media exemption, because the NRA has a federally regulated political committee. In addition, Sirius says it is broadcasting the show for free and the electioneering communications rule only applies to paid broadcasts. So far no enforcement complaints against the NRA have been filed with the FEC.

The FEC also faces questions about the media exemption relating to advertising for documentaries that mention federal candidates. On June 24 the FEC approved [Advisory Opinion 2004-15](#), which held broadcast ads by the Bill of Rights Educational Foundation for a planned documentary featuring President Bush are electioneering communications and cannot be paid for with corporate funds during the 30/60 day blackout periods. The Bill of Rights Foundation did not claim the media exemption, but the issue immediately arose when Citizens United filed an enforcement complaint against Michael Moore for ads promoting the documentary *Fahrenheit 9/11*. Members of the Congressional Black Caucus joined Moore at a press conference the next day, calling the complaint a violation of first amendment rights. Moore vowed to fight the complaint.

New FEC Complaint Filed Against America Coming Together

Three campaign finance reform groups have filed a new complaint at the Federal Election Commission (FEC) against an independent political committee, [America Coming Together](#) (ACT), alleging violation of FEC rules on what activities must be paid for with hard money. Hard money refers to funds raised subject to the limitations of federal campaign finance regulations, which prohibit corporate donations and individual donations over \$5,000. ACT has used soft money to pay for direct mailings urging voters to defeat President Bush and elect progressive candidates all across the country.

The complaint was filed by [Democracy 21](#), the [Center for Responsive Politics](#) and the [Campaign Legal Center](#). Their [press release](#) said the FEC's ruling in an Advisory Opinion earlier this year requires all communications that promote, support, attack or oppose a federal candidate to be paid for with hard money, and the ABC direct mailings clearly oppose re-election of President Bush.

Independent groups, unlike political parties, are allowed to raise and spend soft money. However, they must allocate expenses between hard and soft money funds based on FEC rules. ACT denied any wrongdoing, saying it is in compliance with the allocation rules.

For more details see our [summary](#) of the FEC's discussion of allocation rules at its May 13 meeting.

The Faith-Based Initiative: In the Courts, Congress, and by Presidential Order

- A Wisconsin-based group sues the federal government over the faith-based initiative
- The president creates three new Centers for Faith-Based and Community Initiatives by Executive Order and more agency regulations are announced
- Congress works to include religion in legislation

A Wisconsin-based Group Sues the Federal Government Over the Faith-Based Initiative

On June 17, the [Freedom From Religion Foundation \(FFRF\)](#) filed suit against the federal government in the U.S. District Court Western District of Wisconsin. Named in the suit as defendants are Jim Towey, director of White House Office of Faith-based and Community Initiatives, the Secretaries of the Departments of Justice, Labor, Health and Human Services, and Education, eight cabinet-level or federal "faith czars," and the head of the Centers for Disease Control.

FFRF alleges that the defendants are in clear violation of the Establishment Clause of the First Amendment by "using federal taxpayer appropriations to support activities that endorse religion and give faith-based organizations preferred positions as political insiders." The actions that FFRF cite as unconstitutional include: "the funded support of national and regional conferences, at which faith-based organizations are singled out as particularly worthy of federal funding because of their religious orientation, and the belief in God is extolled as distinguishing the claimed effectiveness of faith-based social services; give preferences for federal funding to faith-based organizations because such organizations are faith-based; act to promote capacity building of faith-based organizations, all of which activities give support to and the appearance of religious endorsement to reasonable observers and/or listeners ..."

"The [faith-based] initiative does not fund religion but rather makes it easier for religious groups to navigate cumbersome federal regulations to apply for grants," says [White House spokesman Jim Morrell](#).

Robert Tuttle, a law professor at Georgetown University School of Law and co-director of legal research for the [Roundtable on Religion and Social Welfare Policy](#) explains that the suit brought forth by FFRF has some procedural problems. "You can't just launch wholesale challenges to a general structure rule. You have to allege specific things that went wrong with specific programs."

The President Creates Three New Centers for Faith-Based and Community Initiatives by Executive Order and More Agency Regulations are Announced

On June 1, President Bush signed an Executive Order creating three additional Centers for Faith-Based and Community Initiatives within the Departments of Veterans Affairs, Commerce, and the Small Business Administration. The new agency centers brings the total now to ten out of the possible 21 grant making agencies. The faith-based centers have been created to audit the agency's existing rules and regulations and to propose changes so that the agency can contract with religious and faith-based organizations for social services. The centers created in the past have all proposed new rules that explicitly state that organizations are eligible to participate in agency programs without regard to religious character or affiliation, and that such organizations may not be excluded from competition of agency assistance awards or sub-awards.

New regulatory reforms continue to come out of the faith-based centers created by past executive orders. These reforms are able to carry out the president's promise to enable faith-based charities to receive federal tax dollars for providing social services programs. One minor stipulation applies to the religious organizations that receive awards; government money cannot be used to finance "inherently religious activity." Inherently religious activity is described in the rules as "worship, religious instruction, or proselytization." While these activities can be carried out by tax-funded grantees, they should be done during a separate time or location from the allowable activities. Agencies that recently proposed new rules or announced a final rule include the Departments of Education and Veterans Affairs, Housing and Urban Development, and U.S. Agency for International Development.

Congress Works to Include Religion in Legislation

Regardless of their failed attempt to pass a comprehensive faith-based initiative, Congress has slipped a few provisions from the president's initiative into different pieces of legislation.

On June 8, the Senate Judiciary Committee held a hearing on "Beyond the Pledge of Allegiance: Hostility to Religious Expressions in the Public Square," which discussed the Constitution Restoration Act of 2004. A bill, which seeks to clarify that the Supreme Court shall not have jurisdiction over any element of Federal, State, or local government, or against an officer of Federal, State, or local government (whether or not acting in official personal capacity), who acknowledges "God as the sovereign source of law, liberty, or government."

Leaked EPA Memo Reveals Likely Delays from Economics Analysis

OMB requirements that agencies conduct economics-based analyses of the costs and benefits of regulatory decisions have delayed several major environmental protections and prompted the Environmental Protection Agency to install working groups of economists for every major rulemaking, according to an internal EPA memorandum.

The memo, from EPA Acting Deputy Administrator Steve Johnson, instructs agency officials to adopt new rules that subordinate environmental decisions to economic considerations:

- **A greater role for economists:** The memo requires EPA program offices to establish, for every rule with large costs to industry, "an economics subgroup of each action development workgroup," to consist of economists from the program office itself and from the EPA's Office of Policy, Economics and Innovation (OPEI).
- **Treating economics as a "science":** Although it will be news to many scientists who specialize in biology, ecology and other empirical sciences, the memo treats economics as though it were such a science instead of a social theory depending in large measure on controversial *a priori* assumptions of human and institutional behavior. In its very first paragraph, it notes, "Science, *including economics*, is continually improving" (emphasis added). This conflation of economics with empirical science is necessary to make sense of the memo's insistence that the working groups of economists will be charged with "developing a plan to conduct economic analyses using the best available science." These "best available" methods include using opinion polls to calculate the value of endangered species, and some of the "best available" examples have recently been shown to lack scholarly integrity.
- **Incorporating White House political values in the scientific process:** This memo also forces the program offices to "meet with the Office of Management and Budget to communicate their regulatory and policy agenda for the remainder of the year." In preparation for those meetings, the program offices "should be prepared to describe the key underlying analytic assumptions or models used" for every economically significant rule on the agenda.

Another requirement, according to *Inside EPA* sources but not in the memo itself, is a redundant follow-up

economics analysis. According to those sources, EPA is also requiring OPEI to review once again the rules that have already undergone economics analysis at the agency, been scrutinized (and perhaps reanalyzed) at OMB, received OMB approval, and been returned to the EPA for final sign-off.

The report identifies several major rules already being subjected to these extra layers of economics analysis, which include safe drinking water rules regulating by-products from disinfection. Sources report that the new reviews could also delay a waste rule to create an electronic tracking system for shipments of hazardous wastes.

Details Emerge on Data Rejected in Morning-after Pill Decision

Internal FDA memos reported by the *Washington Post* last week show senior scientists at the FDA disagreed sharply with the agency's decision last month to bar the Plan B morning-after pill from over-the-counter sales.

The scientists asserted that FDA officials applied a higher standard for determining Plan B's OTC status than has been applied to other drugs. Dr. John Jenkins, director of FDA's Office of New Drugs, wrote in an internal memo reported in the *Wall Street Journal* that Plan B is "fully consistent with the agency's usual standards for meeting the criteria" for OTC status.

The FDA decision appears to rest on political implications of the drug rather than actual science. Jonca Bull, director of the Office of Drug Evaluation at the FDA, called some of the issues raised against the approval of Plan B "speculative and unbalanced," according to the *Washington Post*. The decision is also inconsistent with the evaluation of other forms of contraception, many of which are available over the counter.

FDA scientists join a chorus of medical professionals and legislators in criticizing the decision. "The overwhelming data is that it is safe, effective and usable across age groups," said Vivian Dickerson, President of the American College of Obstetricians and Gynecologists."

Plan B is most effective if used in the first 72 hours after intercourse. Since most unintended intercourse takes place over the weekend when women do not necessarily have access to a physician, medical professionals have adamantly supported the availability of Plan B without a prescription. The American Medical Association passed a resolution last week denouncing the FDA's decision. They also encouraged doctors to write advanced prescriptions for their patients.

"This appears to be an unfortunate triumph of politics over science," said Senator Clinton (D-NY). She called the FDA decision "a sad example of the Administration pandering to its conservative base at the expense of women's health." A group of senators led by Sen. Clinton are seeking a Senate hearing and a General Accounting Office inquiry into the decision. "Through hearings and an investigation by the GAO we should be able to determine whether the FDA violated protocol and ignored scientific evidence to arrive at its decision. We also want to know if there was any intervention by the White House in this process," said Senator Clinton.

[Read Senate Request for Inquiry](#)

Court Rejects Claim in First Decision on Data Quality Act

In the first ever court decision to address the Data Quality Act, a federal district court in Minnesota has held that the Act does not permit petitioners to seek judicial review.

The DQA issue was just one of many complaints targeting the plans of the Army Corps of Engineers and the Fish and Wildlife Service for management of the Missouri River. Several different causes of action were consolidated by the Judicial Panel on Multidistrict Litigation and referred to the U.S. District Court for the District of Montana. The resulting 51-page opinion disposed of the entirety of the case by granting the government's motions for summary judgment. Although the DQA issue received a scant page of discussion, it remains significant nonetheless as the first court decision to address the DQA.

[See full story and DQA background](#)

Rise in Child Deaths Due to Power Windows Angers Safety Advocates

Seven children have been killed by power windows in the past three months, prompting safety advocates to demand government and industry action. The number of deaths is an increase from the two to four deaths per year reported in the past several years.

Most of these deaths are caused by strangulation when a child accidentally trips the power window button and is caught in the rising window. There are two known and fairly economical solutions for car manufacturers to make the windows safer. Auto-reverse windows, which are standard in 80% of cars in Europe, automatically reverse when they hit a barrier. Some American cars, such as the Ford Focus, come standard with auto-reverse windows in Europe but have no auto-reverse feature in the United States.

Even without auto-reverse windows, relatively simple changes can be made to increase the safety of power lock doors. Power windows in most American-manufactured cars are controlled by simple toggle buttons that can easily be triggered accidentally. By contrast, most foreign-manufactured cars control power windows with buttons that require a person to lift up on the button to raise the window, making it much more difficult to accidentally trigger the button. Safety advocates have used the recent rise in power window-related fatalities to call upon the industry and government to make these relatively inexpensive changes.

The Senate highway authorization bill does call on industry to make power windows safer and creates a government database to track power-window-related fatalities. The bill is now in conference with the House highway authorization bill, which does not contain such a provision.

According to [Kids and Cars](#), the leading advocacy group tracking the power window issue, the legislative push is long overdue. The group has been petitioning the government since 1995 to require higher safety standards for car power windows, which are already regulated by many foreign governments. The National Highway Traffic and Safety Administration rule that would regulate power windows was based on a petition filed in 1996. Kids and Cars filed a second petition with NHTSA last year. Based on a [poll of over 1,000 adults](#) conducted by Harris Interactive, 84 percent of Americans believe automakers should take the known steps to install safer power windows.

Industry representatives say the auto industry is already working to phase out the toggle buttons. "But bear in mind," Eron Shostek, spokesman for the Alliance of Automobile Manufacturers told [the Washington Post](#), "there's always a phase-in. You're always going to see it take time to penetrate the entire fleet." Though automakers believe that parents are also responsible for children's deaths due to power windows, the Harris poll also showed that most Americans don't even realize the potential dangers of power windows.

Over one million vehicles with unsafe power windows will be put in the marketplace by the sales of these two vehicles this year.

[Read the Kids and Cars Press Release.](#)

EPA Releases 2002 Toxic Release Inventory: Right-to-Know Compromised

The Environmental Protection Agency's (EPA) 2002 data for the [Toxic Release Inventory \(TRI\)](#) shows a 5 percent increase in toxic releases to the environment. The agency's premier right-to-know program released the new data on June 23, one day after [the Environmental Integrity Project](#) published a report documenting levels of air toxins four to five times higher than previously reported.

Although EPA published the 2002 data online, it did not publish a full Public Data Release (PDR) as it has done in [previous years](#). The lack of full analysis by EPA is putting the public's right to know at risk.

[RTK NET](#), operated by OMB Watch, made the TRI data available on its site June 24.

Background

Congress passed the [Emergency Planning and Community Right-to-Know Act \(EPCRA\)](#) in 1986 shortly after the

Union Carbide chemical disaster in Bhopal, India killed thousands of people. The law aims to alert the public of any chemical facilities emitting toxins in their communities in order to avoid a disaster of the Bhopal magnitude.

The Toxic Release Inventory was created in 1987 under EPCRA, and mandates the collection of data on releases and transfers of certain toxic chemicals from industrial facilities for public disclosure. TRI has expanded over the years and is now EPA's premier database of environmental information. RTK NET developed a searchable online database for TRI and other environmental data in 1989.

Increase in Toxic Releases

Overall, toxic releases reported for 2002 fell 15 percent from 2001. However, this number is misleading due to massive underreporting by the mining sector. A 2003 court decision, *Barrick Goldstrike Mines, Inc. v. Whitman*, allows mining facilities to report far less toxic waste because they do not have to include waste rock. Barring the mining waste numbers that significantly skew the data, EPA reports that:

- Total disposal or releases of TRI chemicals increased by 5 percent (151 million pounds);
- On-site disposal increased by 7 percent (196 million pounds);
- Off-site disposal decreased by 8 percent (44 million pounds);
- Total production-related wastes managed decreased by 4 percent (1.05 billion pounds);
- Disposal or releases of persistent bio-accumulative and toxic chemicals increased 3 percent (11 million pounds);
- Lead releases increased 3 percent (14 million pounds);
- Dioxin releases decreased 5 percent (7,082 grams) from 2001, although these had increased by 43 percent from 2000 (42,188 grams); and
- Mercury releases or disposal increased by 10 percent (465,962 million pounds).

The primary metals and utilities sectors reported the largest increases in disposal or releases. Primary metals' waste increased 39 percent (209 million pounds) and electric utilities increased by 3.5 percent (37 million pounds).

Underreporting

The June 22 report by the Environmental Integrity Project and Galveston-Houston Association for Smog Prevention, indicates that EPA and state agencies are underreporting toxic air emissions by at least 16 percent, essentially hiding actual levels of emissions from the public. The study compares data from the Texas Commission on Environmental Quality and the EPA and then applies it nationwide.

The study examined 10 hydrocarbons covered by TRI that cause rapid ozone formation. Several of these chemicals, like benzene and butadiene, are known carcinogens. The report estimates at least 330 million pounds a year of these emitted toxins are not reported. Additionally, EPA's state pollution rankings change dramatically when the report's findings are applied nationwide.

The differences in reporting are largely attributed to the techniques regulated facilities use when reporting emissions -- most estimate releases instead of monitoring them. Furthermore, the estimated releases that facilities calculate can change drastically when different emission factors are used. EPA previously acknowledged that its emission factors are not accurate. Despite this, EPA completed a rulemaking earlier this year rolling back requirements for air monitoring by facilities.

The report contains a number of recommendations EPA should adopt, including more stringent regulations for air monitoring, a review of state-issued permits to ensure proper monitoring, and a re-examination of emission factors.

Public Data Release

While EPA posted the TRI data online, it no longer publishes a full Public Data Release (PDR), which includes easy-to-understand overviews of the data, detailed analysis, and supporting tables and information. Additionally, EPA no longer makes the companion State Fact Sheets report available in hard copy; this tool provides state-by-state data summaries, maps and other information.

The PDR serves as the official governmental figures on toxic releases. It is used by a large segment of the public through libraries and other avenues. It has been printed and widely disseminated each year since inception of the TRI program, in compliance with legal requirements to produce an annual report. For the first time ever in the TRI history, EPA is downsizing the PDR from the two-volume report, spanning hundreds of pages, to a six-page report.

EPA claims the public can access the same information previously available in PDRs from the online data. Not only is this a complicated and arduous task, but much of the information from the PDR cannot be obtained through the online services offered by EPA. Moreover, given there are updates to the TRI data throughout the year, there will be no "official" figures to use for comparative purposes. Thus, any future analyses will likely be criticized because numbers are unlikely to match in any two research efforts.

OMB Watch posted an [action alert](#), urging EPA to continue publishing the full PDR in both online and paper formats.

