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Comparison of House and Senate Budget Plans

The budget resolution plan passed by the House Budget Committee is far worse than the Senate plan. Nevertheless, the "fiscal discipline" of both plans is based on huge cuts in domestic spending for programs and services that most Americans value in order to extend tax cuts to wealthier Americans.

On March 12, the full Senate passed its budget resolution, S. Con. Res. 95, for fiscal year 2005 (beginning October 1, 2004) by a 51-45 vote. On March 17, the House Budget Committee approved its budget resolution by a 24-19 vote. House floor debate is scheduled to begin on March 24. Following full House approval, a House-Senate conference will take place to arrive at one version of the resolution, which must be voted on in both the House and Senate to become a concurrent budget resolution for the new fiscal year.

Budget enforcement rules are one of the most important parts of these budget resolutions. While the Senate included some enforcement rules in its resolution, the House has drafted a separate "budget enforcement" bill (H.R. 3973). Still unknown, is when the vote on the budget enforcement bill will take place -- it may go before, or after, or on the same day as the vote on the actual budget resolution. The timing may be very important, given that some members of the House may not vote for the resolution without having the enforcement procedures in place. Below is a comparison of the main provisions taken from the House and Senate budget resolutions (included in the House version are the enforcement rules contained in H.R. 3973.)

HOUSE BUDGET COMMITTEE RESOLUTION AND H.R. 3973 PROVISIONS	SENATE BUDGET RESOLUTION PROVISIONS
Binding five-year caps, or limits, on discretionary spending.	Binding two-year caps on discretionary spending.
Pay-as-you-go (Pay-go) through 2009 that applies to mandatory increases, but not to enacted or new tax cuts, so that extending or making permanent the 2001 and 2003 tax cuts is exempt from budget discipline. Pay-go is enforced by "sequesters," or automatic across-the-board cuts.	A "clean" pay-as-you-go extension that applies to mandatory spending increases and to enacted or new tax cuts.
$818.7 billion limit to discretionary spending for FY 2005. Caps are enforced by "sequesters," or automatic across the board spending cuts.	$821 billion in discretionary spending for FY 2005.
$137.6 billion in "reconciled" tax cuts that are exempt from filibuster and a 60-vote requirement in the Senate, a proposed extension of the child tax credit, standard deduction for married taxpayers, a 10 percent bracket expansion, the dividend and capital gains tax cuts, the research and development credit, and a one-year fix of the alternative minimum tax.	$80.6 billion in reconciled tax cuts proposed for a five-year extension of the child tax credit, standard deduction for married taxpayers, 10 percent bracket expansion, and a one-year acceleration of estate tax repeal.
$15 billion in other tax cuts.	$63 billion (using a $20 billion offset) in other tax cuts proposed for a five-year extension of the dividend and capital gains tax cuts, permanent repeal of the estate tax, a one-year “fix (?)” of the alternative minimum tax (AMT), and tax relief in the energy bill.
$13 billion in reconciled program cuts, (Ways and Means - $8.2; Energy and Commerce - $2.1; Gov't Reform - 2.3; Ag Committee - $371 million; Ed and Workforce - $43 million.) with the likelihood of a $2.1 billion cut from Medicaid.	

Two of the most damaging provisions from the Senate Budget Committee's resolution were stripped out of the final version: (1) the pay-go rules were extended to tax cuts as well as mandatory spending, and (2) the cuts to EITC and Medicaid were eliminated. However, the increase in discretionary spending -- from $814 billion to $821 billion -- was primarily to accommodate higher military, not domestic, spending. This budget plan still will require big cuts in domestic discretionary (appropriated) spending at the same time that it reduces revenue by accelerating the repeal of the estate tax, a tax break for multimillionaires, for one year.

As expected, the House Budget Committee budget plan is even worse. The exemption of tax cuts from the pay-go rules means that the 2001 and 2003 tax cuts can ultimately be made permanent, at the huge cost of $1.2 trillion over the next ten years, without requiring any offset. Unfortunately, cuts in government services that most ordinary Americans value have been the preferred means for Congress to "discipline" the budget, while tax cuts to the wealthy require no restraint. The House plan only allows $386 billion for all domestic appropriated spending (excluding military and homeland security.) Additionally, Congress is requiring $13 billion be cut from entitlement spending, of which, $2.2 billion is likely to come from the Medicaid program. According to a Center on Budget and Policy Priorities' analysis, domestic discretionary programs outside of Homeland Security would be cut by a total of $120 billion over five years under this plan.

The notion of Congress reducing budget deficits by extending tax cuts (such as the estate tax repeal and the capital gains and dividend tax cuts) that primarily benefit wealthier Americans, while putting government programs and services that benefit low- and middle-income American families on the chopping block is unbalanced and ineffective. What makes this notion even more inequitable is the fact that tax cuts along with the economic downturn, and not growth in spending, are actually the primary cause of the deficit. The Center on Budget and Policy Priorities recently put out an analysis that disproves the assertion that tax-cuts pay for themselves. Last week, House Budget Committee Chair Nussle (R-IA) explained that while certain cuts, such as those for entitlements, need to be apart of the offset providing pay-as-you-go program, other cuts, such as tax-cuts for certain economic classes, do not need offsets because they will pay for themselves. Center for Budget and Policy Priority's analysis takes the crux of Nussle's argument and illustrates how "no reputable economist — liberal or conservative — has ever shown that tax cuts pay for themselves."

OMNIBUS APPROPRIATION BILL AS FIRST CHOICE, NOT LAST RESORT?

Usually, an omnibus appropriations bill is a last resort. This year it may be the first choice.

The Bureau of National Affairs reported on Friday, March 19, that House Appropriations Committee Chairman Young (R-FL) is floating the idea of drafting an omnibus appropriations bill for fiscal year 2005, without even trying to pass the thirteen individual appropriations bills lawmakers are supposed to. Omnibus bills have been used for the past several years as last-ditch efforts to finish the appropriations process. Those appropriations bills that could not be passed singly were combined into one large bill.

Passing the bills individually could prove even more difficult this year. Limits on appropriated funds for domestic programs (domestic discretionary) outside of homeland security are extremely tight, requiring big and unpopular cuts that are likely to be contentious. In addition, the legislative year is short, what with lots of recesses, the conventions and the Presidential election.

Appropriations for FY 2005 may be a very short process. Stay tuned.

Bush Administration Surpressing Documents in Classification Frenzy

The Bush administration is classifying documents at nearly twice the rate of the Clinton administration, according to statistics compiled by the Information Security Oversight Office, an arm of the National Archives and Records Administration. The current administration has classified 44.5 million records and documents in two years, roughly the same number of records classified during the final four years of Clinton's administration.

In addition to the staggering number of documents classified, President Bush extended classification authority to several federal agencies that previously lacked such authority. New classification powers were granted to the Department of Agriculture, the Department of Health and Human Services, and the Environmental Protection Agency. Historically, this power has been reserved for federal agencies involved with national security, such as the Departments of Defense, State, and Justice.

Government officials explain away the increased classification information and authority merely as the result of the war on terrorism, the war in Iraq, and an increase in electronic records kept by the government.

However, the Bush administration seems to raise the specter of terrorism to deflect any discussion of information policy details. Even prior to Sept. 11, the Bush administration had displayed a strong penchant for secrecy and a belief that previous administrations were too open to the public.

Environmental Protection Agency Fast-Tracking Review of Website Link Policy

The Environmental Protection Agency (EPA) is expediting a review of its policy concerning links from the agency's website to external sites. EPA had originally scheduled the review for January 2005, but moved it up in response to a letter from Reps. Cubin (R-WY) and Gibbons (R-NV). The letter accused EPA of inappropriately linking to extremist groups. OMB Watch and Environmental Defense are among the specific groups the congressmen were referring to.

OMB Watch operates www.rtknet.org, the Right-To-Know network, which provides free public access to various EPA databases. Environmental Defense's www.scorecard.org also provides the public with programs that enable the public to search and understand EPA data such as the Toxic Release Inventory. Currently, EPA links to both sites from its Program Fact Sheet. Both links have a disclaimer explaining that you are leaving EPA's website.

The EPA's current policy for external links lauds the use of links as an efficient way to use other resources and foster an electronic environmental community. It is unclear if the letter from Cubin and Gibbons will influence how EPA views links to such pages as RTK NET or Scorecard.

OMB Watch encourages EPA to make this policy review an open process complete with a comment period for the public. Please visit OMB Watch's Take Action page to send an Action Alert to EPA.

Alabama Considers FOIA Exemption for Security

The Alabama legislature recently introduced Senate Bill 205, which would exempt security information from public disclosure currently mandated under four laws. Alabama State Sen. Steve French (R-Birmingham) sponsored the bill.

Alabama's four information disclosure laws are a Sunshine Law, Open Records Law, Competitive Bid Law, and Public Works Law. These laws require records, meetings of state, county and municipal boards, state or local contracts and bids for contracts to be open for public scrutiny. While security concerns are legitimate reasons for protecting some information, many worry that legislators will use the law to hide other non-security information.

Alabama joins a growing number of states that have considered altering their access to information laws due to security concerns. Fortunately, as we move further away from Sept. 11, these proposals are becoming less frequent.

FEC Urged to Narrow Rulemaking on Scope of Regulation

Three campaign finance groups have written the Federal Election Commission (FEC) urging them to narrow the scope of their proposed rule on what groups must register as "political committees." The three groups are hoping that the FEC can resolve what they deem the most pressing issues for this election cycle. The FEC has not yet responded to their request.

The letter was sent by Democracy 21, the Campaign Legal Center and the Center for Responsive Politics on March 16. It says the proposed rule "is so lengthy, addresses so many issues, raises so many questions and proposes so many new rules that the Commission is unlikely to be able to conclude this matter by its mid-May deadline and promulgate new rules for the 2004 general elections."

The three groups propose that the FEC focus on two issues they say are crucial to prevent circumvention of campaign finance laws. These are:

- Problems with rules governing how regulated and unregulated funds are allocated for partisan voter mobilization efforts.
- When groups exempt under Section 527 of the tax code should have to register as political committees with the FEC and become subject to spending and fundraising limits in its regulations.

The proposed rule could impact a wide variety of organizations, including nonpartisan groups that advocate on issues or work to get out the vote. The groups say the FEC does not have authority to regulate groups under section 501(c) of the tax code without action by Congress.

Even if the FEC limits its new rules to 527 groups, the legal principles being invoked to justify the proposed rule could easily spill over to 501(c) organizations in the future. Democracy 21 has supported bans on nonpartisan issue advocacy in other contexts. For example, they represent Reps. Shays and Meehan in a suit challenging FEC regulations that exempt 501(c)(3) organizations from the "electioneering communications" provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA). Without the exemption nonpartisan groups advocating on issues could not refer to federal candidates in broadcasts 60 days before a general election or 30 days before a primary election.

In their brief to the United States Court for the District of Columbia, Democracy 21 stated, "...the Commission uncritically accepted the argument that the tax code's prohibition on Section 501(c)(3) groups participating in political campaigns." (See p. 78.) They go on to describe communications criticizing a member of Congress for actions taken in his official capacity as an illegal attack on the member, who was also running for re-election. The FEC's proposed rules would extend regulation to any communications that "promote, support, attack or oppose" federal candidates, but do not attempt to differentiate between genuine issue advocacy, such as grassroots lobbying on upcoming votes in Congress, and "sham" issue ads meant to influence elections.

Following Democracy 21's reasoning, genuine issue advocacy can be regulated simply because it coincides with the timing of a federal election. If this principle is accepted by the FEC, calls for regulation of 501(c) groups will most likely be heard as soon as a group antagonizes a member of Congress by criticizing his or her position on an issue. This "slippery slope" would present a danger for any group that communicates with the public on issues.

Wisconsin Considering Copying Federal Rule on Issue Ads

A recent move by the Wisconsin State Elections Board may foreshadow a coming trend that bodes ill for issue advocacy—namely, attempts to regulate such activity. On March 10, the board decided to proceed with drafting a new rule that would regulate so-called "issue ads." The state board's rule borrows elements of the new definition of "electioneering communications" under federal campaign finance law. Unlike the federal law, however, the Wisconsin rule does not ban corporations, labor unions or nonprofits from paying for these communications. Also unlike the federal version—which covers only radio, television, cable or satellite communications—the state version covers all forms of communications are covered. This is a dramatic expansion from the federal rule. A final draft of the Wisconsin rule is expected to be considered at the board's May meeting.

The initial draft rule is explained in a Memo to Wisconsin Elections Board from Counsel George A. Dunst. The draft rule would apply state disclosure requirements and contribution limits for any communication that "refers to a clearly identified candidate for state or local office" and appears within 30 days of a primary election and 60 days of a general election.

So far three parties have submitted comments:

The Co-Chairs of the Joint Committee for Review of Administrative Rules within the Wisconsin Assembly told the Election's Board it does not have the authority to regulate issue advocacy without enabling legislation. However, a bill proposed in the Wisconsin Senate (Senate Bill 12) addresses the same subject.

The Wisconsin Democracy Campaign comments commended the board for moving forward but suggested the rule be limited to broadcast and mass mail communications. WDC also recommends an exemption for charities (501(c)(3)) and civic and social welfare (501(c)(4)) groups, newscasts, and announcements of candidate forums in order "to avoid constitutional challenges." They noted that the Illinois State Board of Elections has a similar rule, but exempts 501(c)(3) groups.

(The federal Bipartisan Campaign Reform Act of 2002, or BCRA, also has exemptions for newscasts and candidate forums. In its regulations implementing BCRA, the Federal Elections Commission (FEC) has exempted free broadcasts and communications made pursuant to 501(c)(3) of the tax code. However, United States Reps. Chris Shays (R-CT) and Marty Meehan (D-MA), House sponsors of BCRA, are challenging those exemptions in federal court.)

The third set of comments, by Wisconsin Education Association Council opposed the rule, saying the board lacks statutory authority to proceed The council also say the rule goes beyond broadcast advertising, which is all that was addressed by the United States Supreme Court in *McConnell v. FEC*.

The new rulemaking began in January, after the Supreme Court held that it is constitutional to regulate campaign activity that does not use "magic words," such as "vote for" or "vote against," if clear definitions of what is and is not regulated are provided. The court also said the government's interest in preventing corruption must be compelling enough to outweigh the burdens and restrictions election laws impose.

Efforts to regulate "sham" issue ads in Wisconsin go back to 1996 when the Wisconsin Manufacturers & Commerce Issues Mobilization Council targeted state legislators in the election. The candidates filed complaints with the Elections Board, which found the ads contained "express advocacy," subjecting them to board rules. However, the courts dismissed the case, since the ads did not contain the "magic words" noted above. Now that the Supreme Court has approved a broader definition of what can be constitutionally regulated (by upholding the electioneering communications definitions), the state is using this broader definition as the basis for its rule.

The Corporation for National and Community Service to Address Program and Policy Issues

Both Congress and the President have asked the Corporation for National and Community Service (CNCS) to undertake formal rulemaking to address significant program and policy issues.

President Bush has instructed CNCS to improve accountability and efficiency in administrating its programs. In an Executive Order, the president asks that the Corporation adhere to four "fundamental principles" when making these changes. The four include expanding opportunities for faith-based and community organizations and raising more money from the private sector and state and local governments.

Meanwhile, through H.R.2673, Consolidated Appropriations Act of 2004, Congress is also requiring CNCS to adopt policy changes to the extent feasible. For example, Congress wants the Corporation to have a peer review panel oversee fund distribution to ensure that priority is given to programs demonstrating quality, innovation, reliability, and sustainability. Like the president, Congress has directed CNCS to significantly increase the level of matching funds and in-kind contributions provided by the private sector, and reduce the total federal costs per participant in all programs.

In addition to exploring the many issues laid out by the president and Congress, CNCS may also suggest setting time limits on how long an organization can qualify for AmeriCorps funding. In order to implement these directives CNCS will conduct a formal rulemaking, the process by which CNCS will establish new regulations that will define (possibly for the next decade) what is expected of AmeriCorps grantees.

Fortunately, CNCS is providing the community with many opportunities to submit comments, suggestions and concerns. CNCS is taking an extra step in the rulemaking process by soliciting comments before it drafts the proposed rule, which again will have an open public comment period. CNCS is holding five regional meetings and four conference calls. The times and dates of the regional meetings and conference calls are on CNCS's website, at http://www.americorps.org/rulemaking/rulemaking_heard.htm.

Save AmeriCorps, a coalition made up of CNCS grantees, has posted their own recommendations for the CNCS to adopt when going through regulatory and policy changes. You can view their recommendations on SaveAmericorps.org.

"Voluntary" Guidelines to Prevent Terrorist Financing Called Poorly Designed

The Treasury Department's "Voluntary Best Practices for U.S. Based Charities," are poorly designed for their stated purpose of helping prevent diversion of funds to terrorists. Several speakers made that assessment at a recent Philanthropy and Security forum, hosted by Georgetown University's Center for Democracy and the Third Sector , which focused on the merits of the Treasury Department guidelines.

Attorney David Aufhauser, General Counsel for the Treasury Department when the Office of Foreign Assets Control (OFAC) released the guidelines in November 2002, explained the background of events and concerns that lead to drafting the guidelines. Although he recognized a possible chill on international charities as a result of the guidelines, he said they are needed to address the use of charities as vehicles for training and recruiting terrorists. Aufhauser said overwhelming evidence pointed to nongovernmental organizations (NGOs) being used for such purposes. However, he noted that only three charities have been shut down under powers granted through Executive Orders, and the guidelines have never been cited as authority.

Jean AbiNader, Executive Director of the National Association of Arab Americans (NAAA), and an expert on international trade and economic development, said the guidelines are not informed by experience, and are more than voluntary, since the executive branch has vastly broadened its powers. The result has been a climate of intimidation and uneven impact. He also noted that the guidelines are being put into grant agreements for federal contracts with the U.S. Agency for International Development. The contracts require NGOs to certify that no funds will be diverted to terrorists, but the lack of NGO infrastructure and a deficit in regulatory oversight stands in the way of any real achievement. The information that United States agencies seek for compliance with OFAC guidelines is practically impossible to obtain.

OMB Watch has called for withdrawal of the guidelines because "they do not reduce the risk of diversion of charitable assets to terrorists, are inconsistent with federal and state laws and place charities in a governmental role of collecting information and assessing potential for terrorist activities."

The Office of Foreign Assets Control has become part of a new agency in Treasury, the Office of Terrorism and Financial Intelligence. This agency also includes the former Executive Office of Terrorist Financing and Financial Crimes and the Financial Crimes Enforcement Network.

Choose the Ten Most Wanted Government Documents for 2004

What information would you most want government to show the public that the public cannot currently see? The 28 secret pages of Congress' joint inquiry into intelligence failures leading up to 9/11? The threats to community safety posed by chemical plants? How the government has used Patriot Act powers? How about a mailing address for the nation's "spy court?"

OMB Watch and the Center for Democracy and Technology are looking for a few good documents, the Ten Most Wanted government documents for 2004, to be precise. And we're inviting the public to help.

We've talked with experts and compiled a list of documents that government could make readily available to the public. Now we're asking the public to rank the experts' choices and suggest other documents for the list. So please go to OMB Watch's Ten Most Wanted survey, to tell us which documents you most want. Encourage your friends and colleagues to take the survey as well. The deadline is March 31, 2004.

The survey consists of two short parts. First, you'll have the chance to rate documents suggested by experts and tell us which documents you would most like government to show the public. (Our list has 19 items. You can nominate the 20th.) Second, we're asking the public to identify the biggest problems they face when trying to get information from government.

What will we do with your vote? We'll announce the results in April as part of the unveiling of OpenTheGovernment.org, a new coalition that will push for more democracy and less secrecy. Then we'll push the government to release the 10 documents voted Most Wanted.

So please, take a few minutes to take the survey.

Please redistribute this announcement to lists you think may be appropriate. It's easy, it's quick, and it'll help open the government. Thanks for doing your part.

Who We Are and Why We're Doing This

The Ten Most Wanted Project 2004 is being conducted by OMB Watch and the Center for Democracy and Technology for OpenTheGovernment.org. OpenTheGovernment.org is a new, unprecedented coalition of over 30 organizations created to fight increased secrecy and promote open government. The Center for Democracy and Technology works to promote democratic values and civil liberties in the digital age. OMB Watch advances social justice, government accountability and citizen participation in federal policy decisions.

If the Ten Most Wanted Project 2004 sounds familiar to you, it should. When the Center for Democracy and Technology and OMB Watch conducted the 10 Most Wanted survey a few years ago (in 1999), we came up with good results. At that time, the Supreme Court did not have a web site (but Mongolia's Supreme Court did). By the 2000 election, the new U.S. Supreme Court Web site was ready to handle the heavy demand to download the Bush v. Gore decision, allowing thousands of people from around the world to read the decisions for themselves at the time that it was published. In another victory, the 10 Most Wanted survey pushed the government to move more quickly in putting online its plans to recover endangered species.

Today, the problems are bigger, and our response will be bigger as well. We have broadened the range of information the Ten Most Wanted Project will cover. We expect the results will have an even greater impact.

Environmental Protection Agency's Egregious Error Misled Public on Drinking Water

A March 5 Environmental Protection Agency (EPA) Inspector General's report revealed that EPA consistently misstated information on the quality of the nations drinking water over the years 1999 to 2002. EPA claimed in several documents during that time that that 91 percent of citizens had access to safe drinking water. According to other EPA documents reviewed by the Inspector General and interviews with state officials, however, only about 81 percent of the country had access to safe drinking water in 2002 much less than the published 94 percent estimate for that year. This is a difference of 30 million people at risk from contaminated water. This erroneous assertion has left millions of people unknowingly at risk.

Individual states did not report all violations to EPA; therefore, the agency presented a flawed and incomplete national picture, according to the Inspector General's report. EPA's acting assistant administrator, Benjamin H. Grumbles, conceded that the agency's data is incomplete but it was not trying to deceive the public, it was simply reporting the information from the national reporting system. Utilities, which test drinking water for nearly 100 pollutants, provide the data to the states. There are 54,000 water systems nationwide, and EPA has no way to determine how many unreported violations occur in these systems.

The District of Columbia's recent discovery of lead contamination in a number of homes has caused greater scrutiny over the quality of drinking water. Since the D.C. Water and Sewer Authority discovered the contamination two years ago, many contend that EPA should have taken quicker action and alerted the city's residents.

A troubling number of recent cases indicate that EPA has not been fully honest in reporting information to the public. The Report on the Environment released last June was heavily edited before its release. EPA deleted an entire section on climate change due to political pressure from the White House. In the past two years, EPA also issued gag orders restricting discussion about perchlorate contamination of drinking water. EPA recommended extensive testing for the chemical after its detection in drinking water and lettuce supplies. The Pentagon and defense contractors disagreed with EPA's risk-assessment of perchlorate, which is used in rocket fuel. EPA later restricted its employees from talking to the public and lawmakers about any danger.

EPA Chided by Senate Environment Committee

A letter from the Senate Environment and Public Works Committee to Environmental Protection Agency (EPA) Administrator Mike Leavitt has urged the agency to respond to requests for information from both Democrats and Republicans on the committee.

Apparently, EPA has been very unresponsive to numerous requests made by ranking minority member James Jeffords (I-VT) since 2001 asking for documents related to the agency's revisions to new source review regulations for power plants and refineries. Many of the requests, as far back as December 2001, remain outstanding. Jeffords threatened to subpoena EPA for the documents in 2002 when he was chairman of the committee.

The March 4 letter was signed by the committee chairman James Inhofe (R-OK) and Jeffords. The two senators also sent Leavitt a letter on March 3 requesting a list of all discretionary grant recipients for 2003 and of details on the awarding of these grants.

In the area of access to government information, there are few warning flags bigger than the inability of a U.S. Senator to get information from an agency. If the agency is willing to stonewall a senator for more than two years, there is little hope the agency will be fully open and responsive to a concerned citizen.

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