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Promoting Government Accountability and Citizen Participation
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The Watcher
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Letter from Gary Bass: OMB Watch Board Changes

Dear OMB Watcher:

We don't normally write *Watcher* pieces about OMB Watch's internal activities. We thought it only fitting, however, to share with you a significant change in our board of directors. After 18 remarkable years as chair of OMB Watch's board, Mark Rosenman recently stepped down as chair (although, to our relief, will remain on the board).

Fellow board member Paul Marchand, a leader in the disability community and director of The Arc and United Cerebral Palsy Disability Policy Collaboration, has taken over where Mark left off, assuming the role of board chair last month. The transition has been a smooth one, so OMB Watch has not missed a beat in our work toward greater government accountability and citizen

participation.

It has been an honor and a privilege to work with Mark as he chaired the board these years. Mark, a faculty member of The Union Institute and University, started on the board in the mid-1980s and became co-chair in 1987. Not long after an anonymous OMB political appointee was quoted in *The Washington Post*, calling OMB Watch "three guys and a goddamned mimeograph machine."

From those humble beginnings, Mark oversaw the growth of OMB Watch as it became an important player in progressive policy circles, as well as a reliable resource to state and local nonprofit organizations across the country. Today, we're "twenty people and the goddamned Internet!" And the organization continues to get major bang for its buck.

Under Mark's steady hand, OMB Watch saw many accomplishments. Some highlights on the policy front included successfully stopping many of the provisions in the Contract with America, a raft of constitutional balanced budget amendments, and several attacks on nonprofit advocacy and free speech. At the same time, OMB Watch played a leadership role on strengthening the public's right to know. In 1989, we created RTK NET, providing online access to toxics and health data.

It was after the 9/11 terrorist attacks that Mark's leadership and commitment to the public's right to know was truly tested. He lead the board through a process that concluded with a decision to continue providing access to executive summaries of EPA's Risk Management Plans, even when EPA decided to remove the data from its web site. This action resulted in communities across the country continuing to have available to them information about chemical dangers, and in several parts of the country changes to reduce community hazards.

Mark's leadership style is a model for other nonprofit board chairs. He involved board members in decisions, and took those extra few moments to reach out to board members between meetings to get their thoughts. His communication style, at once friendly and direct, helped to create a healthy organizational climate, in which board members help set organizational goals and trust in staff work plans to achieve those goals. By example, he demonstrated how a board should provide organizational leadership and fiduciary responsibility.

Paul, for his part, has worked in Washington for nearly 30 years and has had a hand in virtually every piece of federal legislation affecting persons with disabilities. From education rights to civil rights, from heath care to housing, Paul has been a leader. He was also a central figure behind the creation of the Consortium of Citizens with Disabilities, the nation's leading coalition of organizations advocating for the rights of persons with disabilities. We believe his experience with coalition building and organizing around issues will prove invaluable to OMB Watch.

The entire OMB Watch staff will miss Mark's guidance, insight, and humor as chair of the board. Yet we are comforted by Paul's expertise and experience in leading national policy efforts, and we look forward to continuing and expanding our work under his leadership.

If you ever have comments for Paul or me, or wish to share your thoughts on Mark's past leadership, feel free to send us a message at ombwatch@ombwatch.org.

Sincerely,

Gary D. Bass
Executive Director
OMB Watch

Agencies Mislead the Public on Katrina

State and federal government officials are misleading the public about potential health hazards from toxic contamination in New Orleans, according to a Feb. 23 report by the Natural Resources Defense Council (NRDC). Hurricane Katrina's winds and floodwaters released heavy metals and other industrial byproducts throughout the area, according to the report. These hazardous materials then deposited in homes, yards, and schools across the region, in what is now a cracked layer of toxic muck. The Environmental Protection Agency (EPA) and Louisiana Department of Environmental Quality (LDEQ), however, state that contamination levels in the city pose no "unacceptable" health risks -- a statement disputed by the NRDC report using EPA's own data.

EPA took hundreds of soil samples in the New Orleans region from Sept. 10, 2005 to Jan. 15, 2006. While EPA has posted its testing data online, the agency has provided no comprehensive analysis of that data. The hundreds of data points are too complex to be useful to the average concerned citizen trying to determine if it is safe to return to his or her home, or what precautions should take before returning home. Without analysis of the data, residents are left with little other than EPA's and LDEQ's vague press statements about environmental conditions in the area.

The NRDC, for the first time, analyzed the hundreds of EPA soil samples, connecting the data to create the missing overview for the area. The NRDC analysis found high levels of arsenic, lead and dangerous petroleum compounds across the city at levels that represent serious health threats.

NRDC and local advocacy groups, however, point out that state and federal agencies are downplaying the potential health threats despite the data, and are failing to provide adequate guidance to protect the public. Nor have officials initiated an adequate plan to clean up residents' homes.

"It is stunning that the state's environmental agency can look at these results and say there's no problem," said Dr. Gina Solomon, the NRDC senior scientist who oversaw the analysis. "More than a third of the EPA samples in New Orleans had arsenic levels that exceed the Louisiana threshold level requiring an investigation or cleanup. Federal and state agencies have to clean up this toxic mess to ensure returning residents are safe."

The report identified eight hot spots where levels of diesel fuel ingredients, which can cause kidney damage, increased blood pressure, and decreased ability to form blood clots, are more than 100 times higher than the LDEQ's standard for residential neighborhoods. These hot spots are located

in Bywater, Lakeview, Central City/Garden District, and Mid-City, as well as in Chalmette and St. Bernard Parish.

In the absence of meaningful state and federal warnings against possible chemical exposures, community members in St. Bernard Parish are taking matters into their own hands. The Louisiana Bucket Brigade, and the St. Bernard Citizens for Environmental Quality held a March 4 training to distribute and instruct on the use of sampling kits for residents to take soil samples on their property. The samples collected by residents will be shipped to a laboratory to be tested for heavy metals and diesel fuel ingredients -- called diesel-range organics.

Environmental groups are pressing EPA to remove toxic sediment and contaminated soil from yards, fully inform people of the precise scope and nature of the health threats, and provide detailed information about what precautions citizens should take to protect themselves and their families.

First Official Congressional Forum for TRI

A briefing for House congressional staff held on Feb. 23 to inform Congress about the dangers of the U.S. Environmental Protection Agency (EPA) proposals to reduce Toxics Release Inventory (TRI) chemical reporting was the first official forum of its kind. Staff from more than 30 offices heard from a diverse panel of experts on how the changes that EPA is proposing would undermine first responder readiness, harm worker safety, interfere with state programs and hinder cancer research. The briefing was sponsored by Reps. Stephen Lunch (D-MA), Frank Pallone (D-NJ), Luis Gutierrez (D-IL), and Hilda Solis (D-CA).

Presenters in the briefing were:

- **Michael R. Harbut**, a medical doctor and Chief at the Center for Occupational and Environmental Medicine at the Karmanos Cancer Institute in Detroit, Michigan;
- **Alan Finkelstein**, Assistant Fire Marshall Strongsville, Ohio and Chair of Emergency Response with the Cuyahoga County Emergency Planning Committee;
- **Andy Frank**, Assistant Attorney General of New York;
- **Bill Kojola**, an Industrial Hygienist with the Department of Occupational Safety and Health at the AFL-CIO; and
- **Sean Moulton**, Director of Federal Information Policy with OMB Watch, who chaired the panel and offered opening remarks.

Moulton described how, for nearly 20 years, the TRI has been an essential tool in alerting emergency responders, researchers, workers, public health officials, community residents, and federal and state officials to the presence of toxic chemicals. Moulton went on to detail EPA's three current plans to scale back TRI reporting as part of an effort to reduce companies' "paperwork burden." He noted, however, that the proposed changes would only save companies between $7 and $14 a week for each chemical that could be report less--a miniscule amount compared to industry profits that range in the millions and even billions annual.

Harbut's previously recorded statement detailed how any reduction in reporting on the chemicals tracked under TRI will make more difficult the work of cancer researchers, as well as a wide range of other medical research dealing with human health and chemical exposure. Harbut's statement on

TRI can be seen here formatted for dial up users and broadband users.

Finkelstein explained how he and other first responders use TRI information to preplan for emergencies. As a firefighter, he told attendees, he wants as much information about a facility as possible, so the necessary precautions can be taken when entering into a hazardous situation in the event of an emergency. Finkelstein went on to aver that any reduction in TRI data would likely place first-responders, as well as the public, at greater risk.

Frank reported that Attorneys General from 12 states, including New York, sent EPA official public comments challenging the legality of the agency's TRI proposals. Frank noted that many states rely on TRI information and would lose important data if EPA's changes went into effect. He also found serious deficiencies in EPA's research of the potential impacts of the changes. The agency did not produce any analysis of health risks, environmental justice impacts, or of the loss of all reporting on some chemicals. Frank noted that the changes would eliminate all numerical reporting for 26 chemicals and cut more than half of the data available on 30 additional chemicals. New York Attorney General Eliot Spitzer, in a recent press release, stated the proposed cutbacks appear to be "yet another poorly considered notion to appease a few polluting constituents at the expense of a valuable program."

Kajola spoke on workers that regularly use the TRI information to identify hazards and chemical exposures in the workplace. In many instances, once an unnecessary hazard is identified, according to Kajola, workers can collaborate with management to reduce toxic chemical inventories and/or exposures. He went on to say that changes spurred by access to TRI information usually end up saving companies money and creating safer workplaces. Kajola also noted that many of the identified risks are not releases, but pollution that is captured and either managed onsite or transferred for disposal elsewhere. While avoiding direct releases into the environment was important, Kajola explained, tracking onsite and transferred pollution was crucial as well, because such pollution posed a significant risk to workers and the public.

While no librarians were present for the briefing, many also weighed in officially recently. On Jan. 25, the American Library Association (ALA) issued a resolution opposing the EPA proposals. The ALA resolution sited the groups 130 year history of promoting "the ability of the public to access information important to their daily lives."

Whether Congress will weigh in on the TRI proposals remains uncertain. Now that EPA has closed the period for public comments on the proposed changes, however, Congress has become the main forum for this issue.

Reclassification Run Amok

Following sharp criticism from a number of historians and national security experts, the National Archives has issue a moratorium on a massive reclassification program that came to light recently. Since the late 1990s, government agencies have been removing declassified documents from the shelves of the National Archives and considering them for reclassification. Since many of the documents are publicly available--some have even been publicly published by the State Department and are for sale at Amazon.com-- historians and national security experts questioned justifications for reclassifying the documents.

The Reclassification Program

In a Feb. 21 National Security Archives report, Matthew M. Aid disclosed the scope of the reclassification program. The program's inception followed a 1995 executive order issued by President Clinton that required government agencies to declassify all historical records that were 25 years or older, with certain national security exceptions.

In 1998, fearing that many of the documents released were of a sensitive nature, agencies initiated a broad re-review of all national security documents on the open shelves of the National Archives. The program is expected to run until 2007 and, to date, over 55,000 pages of documents have been reclassified. Most of these documents are from the Central Intelligence Agency (CIA), Defense Department, Defense Intelligence Agency, Department of Justice (DOJ), and State Department, often including non-sensitive information and sometimes dating back to World War II. It was not until this year that the public, Congress or even some high-level members of the National Archives were made aware of the massive scope of the reclassification effort. Unlike other similar efforts, Congress did not authorized the intelligence agencies to undertake the program, nor has there been an executive order, or any appropriated money for this expensive effort, estimated to be in the seven digits.

The Problem

Aid's report details the number of documents reclassified and gives a sampling of some of the curious decisions to reclassify. Apparently, 7,711 State Department documents, totaling 29,479 pages, have been removed from the National Archives. The Office of the Secretary of Defense has had 478 documents (13,689 pages) removed, and the Air Force has had 282 documents (5,552 pages) removed. Many of the documents date back to World War II, where as other documents concern completely innocuous and sometimes embarrassing details.

In one reclassified document, the CIA criticizes the State Department for not notifying them about certain details regarding anti-American riots in Bogotá, Columbia. Given that the document dates from 1948, there does not appear to be any legitimate, current national security concerns discussed in the document. In another reclassified document from 1950, the CIA mistakenly argues that China will not enter the Korean War. Again, no sensitive national security details are revealed, though the document could be seen as portraying the CIA in a negative light, since China entered the war a mere two weeks later.

There seems to be a utter lack of policy or criteria for determining which documents qualify for reclassification in the extensive re-review. *Slate* reports that some junior reviewers were instructed to "simply reclassify anything bearing the words 'atomic' or 'restricted data,' regardless of what else the document might or might not contain." This overly broad and vague approach to reclassification is similar to the ongoing over-restriction of information in poorly defined categories for Sensitive But Unclassified (SBU) information.

Oversight and Review

On March 2, the National Archives announced a formal moratorium and review of the reclassification program. The investigation involves a review of National Archive classification procedures to prevent over-classification mistakes from occurring. The National Archives has requested that agencies release "the maximum amount of information consistent with the obligation

to protect truly sensitive national security information from unauthorized disclosure."

In addition to these National Archive actions, the House has stepped in to conduct oversight of the program. Rep. Christopher Shays (R-CT), chairman of the House Government Reform subcommittee, announced his intentions to hold hearings on the program on March 14.

NSA Spying Program on Trial

Concerns over the warrantless domestic spying program by the National Security Agency (NSA) have not gone away. Congressional hearings continue and expand as legal actions begin.

Sens. Arlen Specter (R-PA) and Patrick Leahy (D-VT), chairman and ranking member, respectively, of the Senate Judiciary Committee, conducted another round of hearings on the NSA program. In the first round of hearings on Feb. 6, Attorney General Alberto Gonzales defended the program as both necessary and legal. Gonzales argued that the NSA program is in conformity with the Foreign Intelligence Surveillance Act (FISA) and the Fourth Amendment.

The Feb. 28 hearings continued to focus on the legality of the program. Bruce Fein, former Associate Deputy Attorney General at the Department of Justice in the Reagan administration, railed against the program, stating in his testimony that we are at "a defining moment in the constitutional history of the United States." Fein maintained that the NSA program violates FISA and the Fourth Amendment and called the administration's argument for the legality of the program "preposterous." Fein also argued that Congress should use the power of the purse to "stipulate that the president can undertake no electronic surveillance for foreign intelligence purposes outside of FISA, unless within 30 days the president comes forward with a plan that this Congress agrees will be treated on a fast track basis like trade negotiations and let the burden be on the administration to explain to this committee why changes are necessary."

Arguments in support the NSA program were made at the hearings by, among others, law professor Doug Kmiec, who stated in his testimony that we should not be concerned with the legality or illegality of the program but rather with "what is the appropriate course as we go forward." Kmiec reasoned that the security of the country is at stake in the war on terrorism, and we should, therefore, focus on what is the appropriate program to confront that challenge and not whether such a program is in conformity with FISA and the Fourth Amendment, as "there is a genuine argument on both sides of that question." Former CIA director James Woolsey also defended the legality of the NSA program, arguing that "the inherent authority of the president under Article II, under these circumstances, permits the types of intercepts that are being undertaken."

Today, on March 7, the Senate Intelligence Committee is holding a closed-door hearing to review the NSA spying program. White House officials, in light of polls that show six in 10 Americans think that Congress should have oversight of the NSA program (e.g. American Civil Liberty Union's (ACLU) poll), have made more of an effort to brief Congress on the program. An attempt to require the White House to provide all documentation relating to the NSA spying program was voted down in the House Intelligence Committee. Reps. Pete Hoekstra (R-MI) and Jane Harmon (D-CA), chairman and ranking member, respectively, of the House Intelligence Committee, did agree, however, to expand committee oversight of the NSA program and conduct a review as to whether FISA needs to be modified.

Not waiting for Congress to decide whether the NSA program violates law or procedures, the Center for National Security Studies and the Constitution Project submitted an *amici curiae* brief to the FISA Court in case the court decides to take action. Having learned that the FISA Court received a confidential briefing from the administration on the legality of the NSA spying program, the two organizations submitted the brief to offer an opposing position. The brief argues that the NSA program "not only violates the clear mandates of the [FISA] statute and the Fourth Amendment, it constitutes the very 'exercise of arbitrary power' by the Executive that the Founders sought to prevent by adopting "the doctrine of separation of powers ... [at] the Convention of 1787.'"

In other court action, the *Washington Post* reported that the Al-Haramain Islamic Foundation, a Portland-based charity that had its assets frozen and is now defunct, filed suit against the Bush administration in federal court last week. The charity alleges that it was subject to the NSA spying program and that such surveillance of its communications violates, among other things, FISA and the Fourth Amendment. Citing classified documents, the lawsuit may offer the first concrete evidence of the NSA program's surveillance of domestic communications.

Other cases involving the NSA spying program played out in Michigan and Washington, DC. The ACLU filed a lawsuit in Michigan against the NSA, arguing that the spying program violates the "First and Fourth Amendments of the United States Constitution" and the separation of powers principle. In addition, on Feb. 16, a federal judge for the District Court of the District of Columbia ordered the Department of Justice to respond to requests by the Electronic Privacy Information Center under the Freedom of Information Act (FOIA). The groups is seeking records concerning a presidential order or directive authorizing the NSA to conduct domestic surveillance without the prior authorization of the FISA court. The court ordered the department to respond to these requests by March 8.

Little Progress on Chemical Security

The Government Accountability Office (GAO) concluded recently that, while some progress has been made on chemical security, hurdles and delays remain, including a lack of clear authority for the Department of Homeland Security (DHS) to establish requirements for chemical facilities. The GAO reported its findings in a report released Feb. 27 on the current status of chemical security at DHS. The GAO also found DHS resistant to involving the U.S. Environmental Protection Agency (EPA) in a review of inherently safer technologies that might reduce risks posed by chemical plants.

In response to requests from Sens. Susan Collins (R-ME), James Inhofe (R- OK) and Rep. Christopher Shays (R-CT), the GAO reviewed:

- DHS actions to develop a strategy to protect the chemical industry;
- DHS actions to assist in the industry's security efforts and coordinate with EPA, industry security initiatives and challenges; and
- DHS authority and whether additional legislation is needed to ensure chemical plant security.

Overall the report closely mirrors a 2003 investigation into chemical security also conducted by the GAO that drew many of the same conclusions.

On the progress side, DHS has been developing a Chemical Sector-Specific Plan that will (1)

categorize and prioritize the risks from various plants; (2) address security challenges; and (3) describe DHS's plan to improve security, including coordination with federal, state and local agencies and officials. The DHS review has identified approximately 3,400 high-priority facilities. Unfortunately, GAO found that the most recent version of the DHS document was drafted in July 2004 and DHS could provide no timeline for the plan's completion.

Apparently, because Congress has not passed chemical security legislation granting DHS authority over chemical facilities around security, the agency must rely on working with industry through voluntary programs. The GAO investigation concluded that existing laws provide DHS with only limited authority to address security concerns at U.S. chemical facilities and that new legislation from Congress would be necessary to grant the agency the authority necessary to require security improvements.

Specifically, the GAO recommends that:

- Congress grant DHS the authority to require chemical plant security,
- DHS complete the chemical sector-specific plan in a timely manner, and
- DHS work with EPA to study the security benefits of safer technologies.

While agreeing with the first two recommendations, DHS has expressed reservations about studying safer technologies, according to the GAO. Apparently, DHS does not believe that safer technologies would reduce risks from chemical facilities and would instead shift risks. DHS also expressed concerns over how interaction with EPA in such a study might be perceived by the chemical sector. GAO continues to see merit in such a study and retains the study as one of its main recommendations.

In Congress, Collins developed draft chemical security legislation with Sen. Joseph Lieberman (D-CT) toward the end of 2005. While making progress on key issues, the draft legislation fails to require the review of inherently safer technologies or involvement by EPA as recommended by GAO. The Homeland Security and Government Affairs Committee, of which Collins is Chair and Lieberman is ranking member, was expected to mark up the legislation early in this session of Congress. The scandals involving former House Majority Leader Tom Delay (R-TX), former Rep. Randy "Duke" Cunningham, and lobbyist Jack Abramoff, however, have shifted Congress' attention to lobbying reform. So chemical security has not yet been taken up by the committee this year. Apparently, Sens. Frank Lautenberg (D-NJ) and Barak Obama (D-IL) are using the delay to craft more aggressive chemical security legislation, as an alternative to the Collins-Lieberman bill.

Hearing Highlights Confusion Caused by "Legalese" in Regulation

Writing regulations in a way that is clear and easy to understand will save the government, taxpayers and regulated communities time and money, according to witnesses testifying on Mar. 1 before the House Government Reform Committee's Subcommittee on Regulatory Affairs.

Experts on the use of plain language and a representative from the National Association of Small Businesses all agreed that confusing language was a barrier to effective compliance and enforcement of regulations. There was also consensus that using plain, easily understood language could reduce the burden of regulations on both federal agencies and regulated communities.

Plain language, according to the witnesses, is language written in such a way that the intended reader can understand it the first time. This definition means that what constitutes plain language will vary depending on the intended audience.

In conjunction with the hearing, Subcommittee Chair Candice Miller (R-MI) and Ranking Member Stephen Lynch (D-MA) introduced new legislation (H.R. 4809) that will require regulations to be written using clear, straightforward language. While government initiatives have encouraged the use of plain language for some time, the new legislation will be the first to codify a definition of plain language.

Reducing Burden and Increasing Compliance by Writing Clearly

Testimony by Annetta L. Cheek, Vice-Chair of the Center for Plain Language, included many colorful examples of just how circuitous and ambiguous some of the language used in regulations is. For instance, a Department of Justice regulation states, "No payment shall be made to (or on behalf of) more than one individual on the basis of being the public safety officer's parent as his mother, or on that basis as his father." Cheek suggested one possible plain language revision might be, "We will pay only one person claiming to be the public safety officer's father and only one claiming to be the mother."

Joseph Kimble, a law professor and expert on plain language, peppered his testimony with examples of how using clear, concise language has saved government and private entities money. For instance, in a study of Army officers, "researchers found that readers of a plain-language memo were twice as likely to comply with it on the same day that they received it." In another example, the Department of Veteran's Affairs revised one letter in plain language and in one year, the number of calls to one regional office dropped from about 1,100 to about 200. If all forms and letters were easily understood by recipients, the cost savings could be enormous, Kimble said. The reduction in incorrectly filed forms alone could have a huge impact.

Cheek also pointed out that bad language propagates more bad language. She gave the example of safety instructions for airline passengers. Though the airlines are not required to use the exact same language as the Federal Aviation Administration in their public materials, most airlines copy the complicated language of the regulation precisely, for fear of interpreting it incorrectly if they attempt to rewrite it more clearly. Since many private and public entities rely on regulations for guidance, if the regulations are written in a confusing manner, many of the public materials based on those regulations will also be written incoherently.

Leveling the Playing Field

Using plain language can also help level the playing field. The need for experts to interpret confusing regulations can be a barrier to participation in the regulatory process. Small businesses, citizens groups and interested individuals will have an easier time commenting on ongoing rulemakings if they can easily understand the issues at hand, without having special knowledge or hiring expensive consultants, witnesses argued.

Todd McCracken, president of the National Small Business Association, explained that the regulatory process is skewed in favor of large businesses largely because the language used often requires experts to interpret. The bureaucratic language used means small businesses often have to hire outside experts to help them sort through confusing regulations and tax forms. Writing

regulations in easily understood language would make it easier for small businesses to comply with regulations and participate in decision-making.

Writing Clearly is Writing Intelligently

Both Kimble and Cheek stressed that using plain language does not mean "dumbing it down." Rather, plain language is just good writing, straightforward and concise. Kimble pointed out that it is much more difficult to write clearly than it is to write confounding, complicated sentences. Kimble has put these ideas to the test in helping the Department of Justice rewrite its civil procedures in plain language. Rewriting the procedures more clearly often uncovered ambiguities in the language, which are more difficult to mask when the writer is forced to be clear. The confusion inherent in complex subjects does not have to be compounded with convoluted writing, Kimble said.

Lobby Reform: Two Bills Move in Senate, Still No Bill from House

Just days after Rep. Randy "Duke" Cunningham (R-CA) was sent to jail on bribery charges, the Senate is debating new ethics and lobbying rules, while the House ponders its next move. The Senate will likely vote on legislation this week or next week.

On March 6, the Senate began debating S. 2349, the Legislative Transparency and Accountability Act that addresses reporting and disclosure requirements for lobbyists, and S. 2128, the Lobbying Transparency and Accountability Act. S. 2349, focusing on changes to existing Senate rules on earmarks, gifts and travel and which moved out of the Senate Rules Committee on March 1. The debate is expected to extend into next week, depending on the number of amendments, despite Majority Leader Bill Frist (R-TN) calling for work on the legislation to be finished by the end of the week.

On March 3, Frist said he plans to combine the two bills for vote on the Senate floor. If creating a cohesive reform bill proves too difficult, however, some provisions would be removed and taken up separately.

S. 2349, introduced by Sen. Trent Lott (R-MI), would make it easier to raise a point of order against earmarks, allowing senators the ability to easily strike provisions for special projects common in spending bills. Lott's legislation would also require the posting of conference reports on the Internet for at least 24 hours before the Senate could vote on them, and create new rules for disclosing member and staff travel and require disclosure on a member's website, when a lobbyist pays for any meals or drinks for a member of Congress or staff. For more on S. 2349, see [ADAM's Article]

S. 2128, a substitute bill, introduced by Sens. Susan Collins (R-ME) and Joe Lieberman (D-CT) during a March 2 markup by the Senate Homeland Security and Governmental Affairs Committee (HSGAC), was originally introduced by Sen. John McCain (R-AZ). The bill would require more frequent filing of lobbyist disclosure forms; require lobbyists to disclose their campaign contributions; and increase from one year to two years the time that lawmakers and senior staff are barred after leaving Congress before they can lobby their former colleagues. A number of provisions are expected to be spur contentious floor debate, including a requirement for nonprofits to disclose their grassroots expenditures; a provision regarding how new requirements will be enforced; and limits on the use of corporate jets.

In the March 2 markup of S. 2128, Lieberman and Sen. Carl Levin (D-MI) offered an amendment to change requirements under the Lobbying Disclosure Act (LDA) to include grassroots lobbying. The amendment passed, 10-6. Key elements of the grassroots lobbying provision:

- While grassroots lobbying expenditures would not be used to calculate if an organization is required to report, expenditures of $25,000 or more per quarter for grassroots lobbying would have to be disclosed for organizations already reporting under the LDA.
- The amendment excludes any grassroots lobbying communications to an organization's members. This is defined in accordance with the tax code definition -- i.e. anyone who contributes more than a nominal amount of time or money to the organization or is entitled to participate in the governance of the nonprofit. Reporting would also not include communications directed at less than 500 members of the general public. Voluntary or unpaid grassroots lobbying efforts would also need not be reported.
- 501(c)(3) organizations are allowed to use the tax code definitions of grassroots lobbying in place of the new definitions.

This provision, currently opposed by a coalition of conservative groups, would help level the current uneven playing field, where wealthy interests spend enormous sums on paid mass communications aimed at lawmakers. Many of these "Astroturf" campaigns, an allusion to fake grassroots, are carried out under appealing names that mask the corporate interests behind them. Successful reforms would change this dynamic, giving the public information about who is funding advertising campaigns during legislative debates.

Another controversial provision was defeated in committee. The Collins-Lieberman bill originally included a provision to create an Office of Public Integrity, which would be responsible for investigating ethics complaints and referring cases to both the House and Senate Ethics Committees. Sen. George Voinovich (R-OH), who serves on this committee and is also the chair of the Select Committee on Ethics, led the effort, which was joined by other Ethics Committee members, to successfully strip the independent ethics office provision from the bill. Collins, McCain, and Sen. Barack Obama (D-IL) are expected to fight for reinserting the public integrity office provision.

Lieberman will reportedly offer an amendment that would make lawmakers who fly on privately-sponsored jets pay the full market price for those trips. Sen. Ted Stevens (R-AK), is expected to oppose the amendment, citing the needs of members from large rural states that often depend on private planes to traverse their states.

The Democrats may try to offer an amendment to ban all privately funded travel, although a similar provision was rejected by senators during the drafting process.

How the House will act on lobby reform remains unclear. Despite the slew of ethics reform bills pending in committee, Republican leaders have not backed specific legislation. The House Rules Committee has held a hearing on the subject, which took place March 2 and is the first in a series to determine how to improve House gift and travel rules. At the hearing, Rep. Louise Slaughter (D-NY), the committee's ranking member, advocated for the House Democrats reform package, offered on March 1 to "crack down on the serial abuses of the conference process." Rules Chairman David Dreier (R-CA) noted that reform has begun in the form of a House resolution eliminating floor and gym privileges for former members. He went on to say that he hopes to incorporate "portions of [the Democrat proposal]" into an eventual committee reform bill. The next House

Rules committee hearing is scheduled for March 9 at 10am.

Treasury Shuts Down Muslim Charity

On Feb. 19 the Treasury Department froze the assets of KindHearts USA, padlocking the doors of the Toledo-based charity "pending an investigation." The Treasury Department claims the group has connections to Hamas, but KindHearts officials vigorously denied the allegations. The official closure of KindHearts makes it unlawful for U.S. citizens, businesses, and organizations to carry out transactions with the organization. In response, a coalition of Muslim groups sent a letter to Treasury Department Secretary John Snowe on Feb. 28 requesting a meeting to discuss "the continued targeting of Muslim charities without due process of law."

The Treasury Department announcement stated, "KindHearts officials and fund-raisers have coordinated with Hamas leaders and made contributions to Hamas affiliated organizations." Hamas has been designated as a terrorist organization by the U.S. government. Stuart Levey, Treasury Under Secretary for Terrorism and Financial Intelligence, said, "KindHearts is the progeny of Holy Land Foundation (HLF) and Global Relief Foundation (GRF)," groups that were shut down by Treasury in 2001. The announcement says "former GRF official Khaled Smaili established KindHearts from his residence in January 2002... KindHearts leaders and fundraisers once held leadership or other positions with HLF and GRF."

KindHearts describes itself as a humanitarian aid organization. KindHearts raised $5.1 million in 2004 and has branches in Lebanon, the Gaza Strip and Pakistan. The Treasury Department alleges it gave more than $250,000 to the Sanabil Association for Relief and Development, which was designated as a terrorist organization in August 2003. KinderHearts board chair Dr. Hatem Elhady told the *Toledo Blade*, however, that it contracted with Sanabil to provide aid in refugee camps before the designation was made, and the amount was no more than $115,000, saying, "We did not just give money. We gave it for specific projects, and we saw the results, and we have the receipts."

The Treasury Department also cites a KindHearts "connection" to a former employee of HLF who was indicted by a federal grand jury in Texas for providing material support to Hamas. Mohammed El-Mezain had been retained to raise funds for the organization, but Smaili said the contract was voided as soon as KindHearts learned about the indictment. The case has not yet come to trial.

Jihad Smaili, an attorney and KindHearts board member, rejected the Treasury Department's allegations: "I know the government has listened to every conversation that we've made and traced every wire sent from KindHearts USA to Lebanon or Palestine," he said. "They know exactly what's going on and that we have not done anything wrong." Smaili noted that by using its authority under Executive Order 13224, the Treasury Department does not have to prove its allegations in court. There is no deadline for the Treasury Department to complete its investigation, making it likely that the organization will go out of business even if it is ultimately cleared.

A statement from KindHearts explains that over $1 million was frozen, most of which had been earmarked for earthquake victims in Pakistan and for a new office in Indonesia. It called on the Treasury Department to ensure the funds are used for humanitarian aid, stating:

> *KindHearts is prepared to agree to the distribution of the funds currently held by our Government, except for those funds that will be expended on payment to employees for past services provided and for upcoming legal*

fees, to be spent under the auspices and administration of the USAID Program (of which KindHearts is a member) or any other NGO (United Nations, Red Crescent, etc.) on KindHearts programs, or any other humanitarian program that it deems justified. However, KindHearts requests that special consideration be given to the refugees in the earthquake ravaged areas of Pakistan since the overwhelming majority of frozen funds were earmarked for projects therein.

The statement notes that KindHearts was among the Muslim organizations investigated by the Senate Finance Committee, which found no wrongdoing.

The response in the Muslim community to KindHearts' closure was decidedly and not surprisingly negative. A coalition of 10 national Muslim groups, the American Muslim Taskforce on Civil Rights and Elections (AMT), sent a letter to Treasury Secretary John Snowe stating, "As leading American Muslim organizations, we note that although we understand the political climate of our country and support our government's efforts to thwart terrorist financing; we find it unfair that our government has yet made another extrajudicial decision to effectively wipe-out more than five years of humanitarian assistance to the world's needy by the mere stroke of a pen. The immediate effects of KindHearts' closure have already been felt in orphanages, schools, shelters, and medical centers around the world."

A Treasury spokeswoman would not comment on the meeting request.

HHS Gives Guidance on Federal Funds, Religious Programs

Settling a lawsuit filed by the American Civil Liberties Union (ACLU), the U.S. Department of Health and Human Services (HHS) has agreed to suspend funding of a nonprofit accused of using taxpayer dollars to present religious messages in a federally-funded sexual abstinence program.

Under the terms of the settlement, reached on Feb. 23, HHS has agreed to withhold the $75,000 grant it made to Silver Ring Thing (SRT), a Pennsylvania-based nonprofit that runs faith-based sexual abstinence education programs for teens across the country. SRT will not be eligible for any more federal funding unless it changes its program to ensure the money is not used for religious purposes.

As part of the settlement, HHS agreed to continued suspension of the current grant and quarterly monitoring of SRT by HHS to ensure future compliance with any grant requirements. Additionally, any grant requests made by SRT must include a complete description of proposed program activities, what actions they will take to comply with the HHS guidelines, and how the federal funds will be spent and accounted for. If SRT is given a federal grant, or a congressional earmark - most of its federal moneys have come through earmarks requested by Sens. Rick Santorum (R-PA) and Arlen Spector (R-PA) - the ACLU is to be notified by HHS. The settlement agreement expires Sept. 30, 2008.

In May 2005, the ACLU filed a lawsuit against HHS, accusing the department of allowing SRT to use federal funds for primarily religious purposes. The suit charged the nonprofit violated the First Amendment because the federally funded abstinence program was not adequately segregated from its religious program. Specifically, the ACLU said the group's high-tech, three-hour road show - paid for with federal funds - provided Bibles and silver rings with religious messages for teens to wear as

a token of their pledge of chastity until marriage.

Three months after the suit was filed, HHS suspended funding for the program. In a Sept. 20, 2005 letter to SRT, HHS stated misgivings that "the federal project that is funded ... includes both secular and religious components that are not adequately separated." HHS asked SRT to submit a Corrective Action Plan in order to receive the remaining grant funds.

That letter included six steps SRT needed to take to separate government-funded activities from religious activities:

- **Separate and Distinct Programs**: There must be separate and distinct programs for religious and secular instructions and teachings, and the distinction must be clear to the consumer. This could be achieved by creating different and distinct names and promotional materials, and promoting only the federally funded parts of the programs with federal money.
- **Separate Presentations**: Presentations must be separated by time or location. The presentation could be held in "completely different sites or on completely different days." HHS clarified that if the programs are held on the same site but at different times, there should be sufficient time to end one program before the other begins, and participants should be dismissed from one program before beginning another. If the programs are held at the same time but at different locations on the same site, there should be separate registrations, and separate rooms should be divided by floors or hallways.
- **Religious Materials**: Eliminate all materials with religious content from the federally funded abstinence program.
- **Cost Allocation**: Federal money is only to be used for federal programs. This should be demonstrated using time sheets to tally staff hours, particularly when employees work in both the religious and secular programs. If employees work on both programs on the same day at the same site, they must clearly account for their hours worked in each program. Cost allocation should be shown for all staff time, equipment and travel. For example, if secular and religious traveling programs are presented at the same site on the same day, the costs must be split between federal and private money.
- **Advertisements**: Federally funded programs cannot advertise the grant program services only to religious target populations.
- **Invitation to Religious Program**: At the end of a federally-funded program, participants may be invited to attend another religious abstinence education program. But the invitation must be "brief and non-coercive" and make clear that it is a separate and voluntary program.

Federal regulations require that faith-based organizations provide religious programs at a separate time and/or location from publicly funded programs. With the inclusion of the required "safeguards" in the settlement documents, HHS has provided the first clear guidance in what constitutes adequate separation.

SRT may apply for new federal grants, although SRT founder Dennis Pattyn says the organization will not be doing so. If the nonprofit does apply for additional federal funds, it will be required to demonstrate how it will be separating its religious message from its federally funded abstinence program.

Report, Announcement on IRS Program to Curb Partisan Activity by

Charities, Religious Groups

On Feb. 24 the Internal Revenue Service (IRS) released its much-anticipated assessment of its program created in 2004 to enforce the ban on partisan election activity by charities and religious organizations. The report found that nearly 75 percent of organizations investigated had violated the ban. At the same time, the agency released guidance that includes detailed examples based on the types of situations that led to investigations in 2004. While continuing to expand its educational efforts, the IRS also announced it will step up enforcement for the 2006 election cycle, releasing new procedures for expedited handling of referrals alleging violations, in an effort to end any ongoing violations.

The day of the release of both the report and new procedures, IRS Commissioner Mark Everson cited the need for increased enforcement in a ">speechto the City Club of Cleveland, noting that there has been "a dramatic increase in the amount of money financing politics." He asked the audience, "Are we going to let these political activities spread to our charities and churches?", to which he answered by calling for action "before it is too late." Everson described the 2004 enforcement program that was intended to "stop improper activity during-not after-the election cycle," and went on to explain that in 2006 the IRS will start the program earlier in the year; expand staff dedicated to the project; and increase its outreach and educational efforts.

The report on the 2004 Political Intervention Compliance Initiative (PACI) said it reviewed complaints filed against 132 nonprofit (501(c)(3)) organizations, 22 of which were found to not merit further investigation. The IRS has completed 82 of the remaining 110 examinations, finding partisan activity occurred in 58 of reviewed cases. Of these only three warranted revocation of tax-exempt status. In the remaining 55 cases the IRS issued written advisories and, for one organization, an excise tax. According to the IRS advisories were issued "when the Service believes the organization engaged in prohibited political activity, but the activity appeared to be a one-time, isolated violation, and the organization corrected the violation where possible...and took affirmative steps to ensure it would not violate the prohibition in the future." Groups that receive advisories are warned that future violations risk revocation of exempt status.

The common fact situations, noted in the report, that led to findings that groups had crossed the line into partisan activity were:

- Distribution of printed materials that encourage members to vote for a candidate (24 alleged, 9 determined)
- Endorsements from the pulpit (19 alleged, 12 determined)
- Support for a candidate on the organization's website (15 alleged, 7 determined)
- Distribution of partisan voter guides or candidate ratings (14 alleged, 4 determined)
- Campaign signs displayed (12 alleged, 9 determined)
- Preferential treatment given some candidates to speak at events (11 alleged, 9 determined) and
- Cash contributions to a political campaign (7 alleged, 5 determined)

Twenty-eight cases remain open.

IRS enforcement activity in 2006 will be expanded, using a centralized process allowing quick response to referrals and complaints. Cases will be classified as:

- Type A (single issue/non-complex), which would typically be resolved through correspondence and involve only one organization,
- Type B (multiple issue/complex), involving multiple organizations or issues, and required review of books and records, and
- Type C (egregious/repetitive), that require immediate IRS action.

Special procedures apply to churches, in compliance with tax code provisions intended to limit government intrusion into church affairs.

Fact Sheet 2006-17 summarizes the IRS interpretation of the ban on intervention in elections in a variety of fact situations, covering voter mobilization and education, individual activity by leaders, candidate appearances, issue advocacy vs. political campaign intervention, voter guides, websites, business activity, and multiple or combined activities. Its issue advocacy section states that "501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office" but "must avoid any issue advocacy that functions as political campaign intervention." The IRS will consider all facts and circumstances to determine which is which, and lists factors that help determine whether a statement is issue advocacy or partisan, examining whether an activity:

- Identifies one or candidates
- Expresses approval or disapproval of one or more candidates' position on an issue or an action taken
- Is made close to the date of the election or refers to voting and the election
- Raises an issue that distinguishes candidates
- Is part of an ongoing series on the issue that are not timed to the election and
- Is timed to influence an non-electoral event, such as a vote on specific legislation.

The new procedures do not establish criteria for the IRS to filter out referrals made by people or groups that intend to harass political opponents or watchdog groups. Shortly after the IRS announcement the *Washington Post* reported that Rep. Sam Johnson (R-TX), a member of the House Ways and Means Committee who sits on a committee with oversight of the IRS, sent a letter to the IRS requesting an investigation of Texans for Public Justice. The group, founded in 1997, tracks the influence of money on politics in Texas and publishes detailed reports on campaign spending and corporate lobbying. A 2003 report by Texans for Public Justice on illegal corporate spending in the 2002 reelection campaign of Rep. Tom Delay's (R-TX) led to a criminal indictment for Delay.

The 2003 IRS examination of Texans for Public Justice, which included two auditors reviewing its books, found no violations. Founder Craig McDonald said the audit was "political retaliation by Tom DeLay's cronies to intimidate us for blowing the whistle on DeLay's abuses." The IRS said political considerations do not enter into its decisions, noting that two career employees must agree there is cause for a review before it can proceed.

The Texas case illustrates the potential problems inherent in the IRS's 2006 enforcement plan. The combination of abuse of the enforcement system in order to harass and the IRS's expedited procedures could silence nonprofits critical of public officials. The new enforcement process appears to focus on deterrence prior to any finding of wrongdoing. Hopefully the IRS will continue to fine tune its procedures to address these problems.

New PART Scores Showcase More Contradictions of Program

The president's recent budget, released in early February, contained another round of federal program assessments produced by the Office of Management and Budget using the administration's Program Assessment Rating Tool (PART). As in past years, this new round of PART scores and associated budget requests call into question the value and purpose of PART ratings, which appear to have little logical and no discernable link to budget requests.

Shortly after the Office of Management and Budget released the President's FY 2007 budget, the agency released a list of the 141 programs slated of cuts or elimination in the president's State of the Union address due to their lack of results. These cuts to discretionary programs would save nearly $15 billion in FY07--$7.3 billion by terminating 91 programs and $7.4 billion by cutting funding for another 50--a drop in the bucket in the larger budget picture. This year, the administration's funding recommendations not only continue to illustrate the subjectivity and inconsistency of the PART itself, but also calls into question the reasoning underlying the PART, that is, the White House's dedication to good program management and objective results.

Last year, President Bush suggested cutting or terminating 154 federal programs, of which less than one-third had been reviewed using the PART. Congress accepted 89 of the President's proposals, cutting a total of $6.5 billion from federal spending. This year, Bush is suggesting terminating 91 programs and reducing 50 others. By far the greatest cuts under the proposal--almost $3.5 billion--would come from the Department of Education.

Just like last year, of the 141 programs slated for cuts and termination by President Bush, less than one-third have gone through the PART process. Among the 45 programs on the president's list that did receive PART ratings, 12 were rated "adequate" and three received the second highest mark of "moderately effective." No programs singled out by the president received the tool's highest rating of "effective."

Among the remaining programs slated for cuts, 12 received the lowest rating of "ineffective." Seventy-five percent of those ineffective programs were slated for complete elimination, and one, the HOPE VI program in the Department of Housing and Urban Development, was slated for rescission, funding cuts, this year.

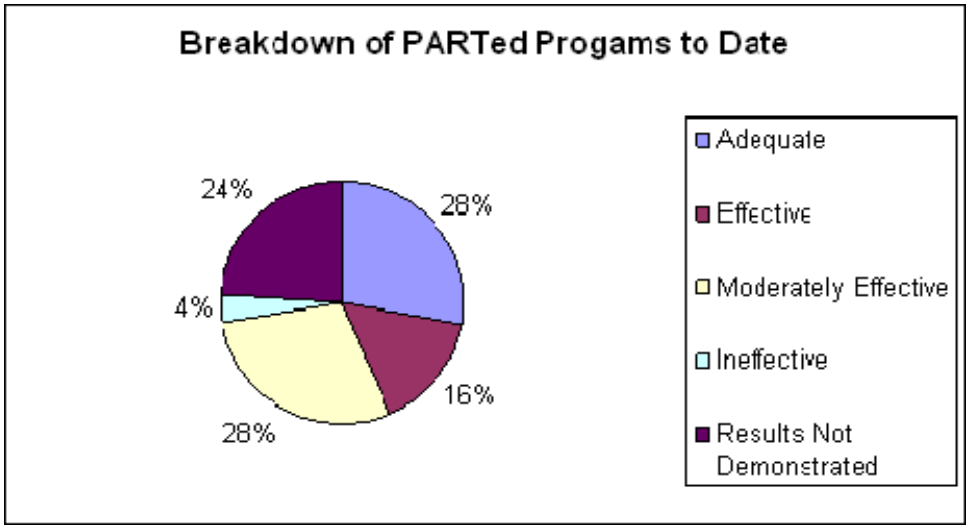
Forty percent of the PARTed programs slated for cuts received the rating of "results not demonstrated (RND)," meaning the PART programs were unable to develop acceptable performance goals or collect data to determine whether it is performing. Often these programs collect data, undertake rigorous performance assessments, and set goals of their own--data often found, however, to be unacceptable to OMB.

Under the PART, programs can be penalized for following congressional statutory intent or implementing Supreme Court rulings. The PART allows OMB, and in turn the president, to insert their own perspective and objectives into the oversight and budgeting functions ordinarily reserved for the legislative branch. This has implications for the balance of powers between the three branches of the government, particularly if the PART were to be, as has been proposed, used in budgeting decisions made by Congress.

A Broader Look at PART

This is just one of many significant problems with the PART. To date, roughly 80 percent of all

government programs have been rated by the PART, and by this time next year all programs will have gone through the process once. Below are the ratings for all government programs to date:



Of the programs rated ineffective since the first year the PART was used, four have been slated for funding increases by the administration. It is unclear why certain "ineffective" programs should be terminated outright, while others should receive funding increases. It is also difficult to determine whether a failing program could be turned around with additional resources or if the program is a lost cause. This subtlety is lost in the PART questionnaire.

Further, a connection is lacking between PART ratings and budget requests. For example, 125 programs have been rated effective over the last four years, of which 35 were proposed for funding cuts in the current budget, 11 saw their funding remain the same, and the remaining 79 saw funding increases. This seemingly arbitrary funding pattern illustrates substantial inconsistencies with the PART, pointing to the subjectivity of PART evaluations.

Subjectivity and political bias in the PART also seems apparent when survey how budget requests are handled for programs that fall under the category of "results not demonstrated." Of the over 800 programs which have been evaluated to date, 189--almost 25 percent--have been rated "results not demonstrated." Comparing the RND programs from the Department of Education (historically opposed by Republicans) and the Department of Homeland Security (created by this president) one immediately is struck by the inconsistency of PART rating and budget requests. The president proposed cutting nearly 25 percent of the Education Department's RND programs, but just 6 percent of those in the Department of Homeland Security.

Perhaps most ironic is the Federal Emergency Management Agency's PART score of "adequate" awarded before its incredibly inept and calamitous response to Hurricane Katrina, particularly in light of programs with proven track records of success, such as Upward Bound, receiving ratings of "ineffective."

OMB Deputy Director Clay Johnson, who is the administration's point person on PART, has done little to clarify these inconsistencies. Before the House Budget Committee in a hearing on government performance on Feb. 16, Johnson testified on the use of PART and on the government's new PART website, expectmore.gov.

The website allows individuals to view all completed PART questionnaires and includes very short descriptions of actions taken as a result of the PART rating. During the hearing, Rep. Brian Baird (D-WA) was particularly effective in exposing the inconsistent way budget requests are made for different programs receiving the same PART rating. Johnson implied that administrative priorities--and not merely the PART--allow for some programs to receive funding increases, and others to receive cuts, such as in the case of the "results not demonstrated" category. In the cutthroat budget squeeze, when it comes down to guns vs. butter, it was apparent in listening to Johnson that the rating tool of the administration appears to favor guns regardless of PART scores.

Johnson also mentioned in his testimony that government performance is important and accountability necessary when it comes to spending taxpayer dollars, a statement with which few would argue. Yet the OMB's PART is neither a true government performance tool or an objective analytical mechanism. There is little evidence PART scores are comprehensively and objectively used in an unbiased manner to inform the development of the president's budget requests. Rather, it seems the president's rhetorical focus on performance and results is merely a smokescreen providing cover for a predetermined political agenda, seeking to promote a particular ideology while drastically reducing the size of the federal government.

President Restarts Push for Line-Item Veto

In his State of the Union address, President Bush once again proposed the line-item veto to Congress as a way to reduce deficit spending. While Bush is touting this "tool of fiscal discipline," in reality unchecked use of the line-item veto by the president would be akin to letting a kid loose in a candy store, transferring inordinate power from the legislative to the executive branch, and effectively allowing the president to substitute his spending priorities directly for that of Congress.

The proposal would give Bush similar, but not identical, powers to those granted to President Clinton that only achieved minimal savings. Clinton was given use of the line-item veto in 1996 by a Congress concerned over its own lack of fiscal discipline. It granted the president authority to "cancel discretionary appropriations, any new item of direct spending (entitlements and other mandatory programs), and certain limited tax benefits," according to a May 2005 report from the nonpartisan Congressional Research Service (CRS). In 1998 the Supreme Court deemed the Line Item Veto Act unconstitutional, because it violated the constitutional requirement that legislation be passed by both houses of Congress and then presented *in its entirety* to the president for signature or veto.

Bush's line-item veto proposal would be considerably weaker than the version struck down by the Supreme Court. It would require Congress to cast an up-or-down vote on a package of rescissions proposed by the president to spending or tax bills previously passed by Congress. In order to skirt the constitutional problems, Congress would be required to vote within 10 days of the president having proposed such a package. Like reconciliation bills, the package from the president would not be subject to amendment and would be protected from filibuster in the Senate. Unlike a regular presidential veto, which requires a two-thirds majority in Congress to override, a simple majority would be required to adopt the president's changes. Similar proposals have been floated in the past, but have been beaten back in both chambers most often by congressional appropriators. Some congressional supporters are hopeful that Bush's proposal will gain momentum in Congress now, in light of the corruption scandals involving former Rep. Randy "Duke" Cunningham and lobbyist Jack Abramoff, as well as public outcry over the transportation bill passed last year that was chocked full

of thousands of earmarks.

Bush has made it quite clear that he would like to reinstate the line-item veto. An anonymous White House official recently told the *New York Times*, that the President will ask Congress for a line-item veto power as early as this week.

According to a CRS report and other independent analyses, however, possible savings from the line-item veto are relatively small. A series of 1995 House hearings on the Line Item Veto Act included testimony from OMB and CBO officials that an line-item veto would not have a huge impact on reducing the deficit. CBO Director Robert Reischauer cautioned that, at times, governors, many of whom have line-item veto powers because of state balanced-budget requirements, used the line-item veto to insert their own spending priorities instead of reducing state spending by the legislature. He alluded to the same concern on a national level, where the president could use this power to further his own political agenda rather than cutting unnecessary spending.

CRS estimates that giving President Bush this power for FY 2007 would end up achieving approximately $1.5 billion in annual savings, a miniscule reduction of the deficit, currently projected to reach upwards of $400 billion. This hardly seems worth the risks of altering the balance of power among the three branches of the federal government. Similar to other initiatives and budget process changes trumpeted by the president, the proposal is little more that a power grab, put forward under the guise of fiscal restraint but whose real affect would be increased control over the budget process for the White House.

Senate Rules Committee Passes Process Reforms

Last week, the Senate Rules Committee and the Homeland Security and Government Affairs Committee marked up separate versions of lobbying and congressional ethics reform bills, starting the ball rolling in the Senate on reform after the scandals surrounding former lobbyist Jack Abramoff and former Rep. Duke Cunningham (R-CA). The two bills are expected to be combined. The resulting bill will likely seek to increasing transparency around the earmarking process; further restrict practices that lead to abuses of power in conference committees; and allow outside advocates and citizens to more easily track decision-making throughout the budget process.

The Rules Committee marked up the "Legislative Transparency and Accountability Act of 2006" on Feb. 28 and passed the bill out of committee with a unanimous 18-0 vote. The bill, authored by Committee Chairman Trent Lott (R-MS), focuses on disclosure of earmarks and would require a supermajority of 60 senators to approve each earmark if a point of order is raised on the Senate floor. In the past, stripping a provision from a conference report would have sent the entire bill back to committee. Under Lott's proposal, only the earmark provision would be stripped and the bill could continue to move forward, with the revised conference report with the earmark removed being sent back to the House for a vote.

Lott had strongly opposed restrictions on earmarks, opting instead for this disclosure mechanism. Lott's original plan, however, only required a simple majority to override a point of order and retain the earmark. Sen. Dianne Feinstein (D-CA) offered an amendment in committee, which passed, to change the 50-vote point of order to a 60-vote point of order.

The term earmarks includes spending bills, authorizing legislation, tax provisions, and other revenue

items. It applies to a provision that identifies an entity, other than the federal government, that is to receive funding, through a government contract or grant for instance. Lott's bill would require all such earmarks to be identified clearly by the sponsor and to have an accompanying justification. Any earmarks in a bill, amendment, or conference report also must be made publicly available via the Internet 24 hours before its consideration. The bill would create a new Senate website that would display this information.

Other major provisions in the bill include:

- The elimination of floor privileges for former members of Congress, Senate officers and House Speakers who are registered lobbyists, foreign agents, or employed by someone who is lobbying on a legislative proposal.
- A ban on gifts from registered lobbyists or foreign agents. This excludes the cost of meals, however, which would be required to be posted on the Member's website within 15 days and would continue under existing dollar limits.
- A ban on travel that is paid for by registered lobbyists and foreign agents. Lawmakers wanting to accept paid travel from others must receive pre-clearance from the Senate Ethics panel and certify that the travel is not paid for by lobbyists or foreign agents and that the travel sponsor did not receive funds from such sources to pay for the travel. Information about such travel is to be posted to a member's website within 30 days of the trip.
- A provision requiring members or staff to report all details about flights taken on private aircrafts.

On the other side of the Capitol, the House has yet to put much effort into a lobby and ethics reform package, with Majority Leader John Boehner (R-OH) simply noting he expects lobbying reform legislation to "move in the coming weeks."