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In This Issue

Lobby Reform Bill Passes House without Grassroots Lobbying Disclosure

By a vote of 396-22, the House approved new lobbying reform legislation on May 24 when it passed the Honest Leadership and Open Government Act of 2007 (H.R. 2316). The bill increases the reporting requirements for registered lobbyists, establishes a new electronic disclosure system, imposes new penalties for violating lobbying laws, and includes the controversial proposal to require registered lobbyists to report their bundled campaign contributions (H.R. 2317). The bill will now go to conference committee with a similar Senate bill that was passed in January.

The bill contains several important reforms including expanding the rules governing

registered lobbying and requiring electronically filed quarterly reports, which would be available to the public. Lobbyists and firms that employ them would have to certify they have not provided any gift, including travel, to a member of Congress. It also would amend House rules to bar contact with a member's spouse who serves as a lobbyist and require members and senior staff to disclose job negotiations to the ethics committee after they leave Congress, and create penalties for attempts to influence partisan hiring by outside firms. The House bill also doubles the civil penalties for violating the disclosure rules, from $50,000 to $100,000, and adds criminal penalties of up to five years for those who "knowingly and corruptly" fail to comply.

The Democratic leadership in the House filed two lobby reform bills on May 15, H.R. 2316, and a separate bill to require registered lobbyists to report their bundled campaign contributions, H.R. 2317. Neither bill included grassroots lobbying disclosure, but Rep. Martin Meehan ☼ (D-MA) offered it as an amendment during the Judiciary Committee's mark up on May 17. In introducing his amendment, Meehan made important clarifying points. "Many different groups are trying to distort what the amendment will and won't do . . . This bill does not cover groups or individual people. This amendment only covers firms retained by clients to engage in these communication campaigns. This bill will not require average people interested in their government to suddenly register as lobbyists."

However, the amendment faced strong opposition from both Democratic and Republican committee members. Rep. Artur Davis ☼ (D-AL) commented during the hearing, "Imposing a reporting requirement does create a burden. My concern is that the individuals, or the entities rather, who will most likely clear that burden, are the well-heeled, those on the corporate side, as opposed to those who may be more on the public interest side." The amendment was rejected by the committee. Given the defeat and strong reaction during mark up, Meehan decided against bringing up the provision again when the bill reached floor debate.

The House Judiciary Committee made slight alterations to the two lobbying reform bills before they went to the floor. The committee approved H.R. 2316 after Chairman John Conyers (D-MI) successfully added a manager's amendment which made three changes to the bill. One of the changes was the removal of the "revolving door" provision that was originally part of H.R. 2316, which would have extended the prohibition on lobbying from one year to two after a lawmaker or senior staff member left Congress. This turned out to be very unpopular among House members who expressed a concern about retaining highly qualified staff and their own future income. The revolving door measure seemed to be voluntarily dropped in return for support of Rep. Chris Van Hollen's (D-MD) bundling bill (H.R.2317).

Retreat on the revolving door provision received negative media attention, especially after many freshman Democrats campaigned on a platform promising to change ethical standards in Congress. For example, a *Boston Globe* editorial titled "It came from the ethics swamp" lamented that the "revolving door provision was allowed to die ostensibly to clear the way for a more significant reform: a bill that would require disclosure by

lobbyists who sponsor 'bundled' campaign contributions."

The manager's amendment changed the details of the provision requiring members and congressional staff to disclose employment negotiations to the Ethics Committee, which does not disclose the information, as opposed to notifying the House Clerk's office, where the information would be public. Additionally, a provision to disclose who is behind various coalitions that lobby was changed to exempt nonprofit coalitions from disclosing. A measure to prohibit lobbyists from sponsoring extravagant events at political party conventions was also resoundingly voted down.

Over forty amendments were submitted to the Rules Committee, but only five were allowed for floor consideration. The House adopted a Republican "motion to recommit" with further reforms. These removed the House gift rules exemption for state and local governments and public universities, placed restrictions on former lobbyists who take jobs on Capitol Hill ("reverse revolving door"), and required more detailed disclosure of lobbying for earmarks. A Republican-sponsored change was also approved that expands the bundling provision to cover contributions lobbyists arrange for outside political action committees.

The bundling provision covers campaign contributions of $200 or more per quarter collected by registered lobbyists and forwarded to candidates or their political committees, and $5,000 or more bundled from all federal political action committees, including independent 527s. The new lobbying disclosure requirements would force lobbyists to disclose on a quarterly basis, instead of semi-annually, and the threshold to trigger reporting would be $10,000 per quarter. The lobbying disclosure information would be made available through a searchable database on the Internet — and the data would be linked with campaign contributions recorded by the Federal Election Commission.

In addition to the bill not addressing grassroots lobbying disclosure and the revolving door, it also did not address ethics enforcement. Advocates have been calling for an independent office to provide enforcement. The House is expected in June to provide a plan for ethics enforcement.

IRS Urged to Use Terror Watch Lists to Check Nonprofits

When it comes to the effectiveness of using watch lists to identify terrorist threats, theory and reality yield very different results. On May 21, the Treasury Inspector General for Tax Administration (TIGTA) issued a report criticizing the Internal Revenue Service (IRS) for not using the FBI's Terrorist Screening Center's (TSC) consolidated watch lists to check nonprofit tax filings for possible matches to suspected terrorists. At the same time, non-governmental groups have criticized the watch lists as being riddled with errors and said no clear reason exists as to why some people or groups are put on the lists. Additionally, a 2005 Justice Department Inspector General report confirmed many

deficiencies with the TSC.

The TSC was created December 1, 2003, and is run by the FBI to consolidate terrorist watch lists and provide 24-hour, 7-day-a-week operational support for federal, state, local, territorial, tribal, and foreign governments as well as private sector screening across the country and around the world. TIGTA assumes the larger TSC list would produce better information than Treasury's own Office of Foreign Assets Control's (OFAC) list of 1,600 entities and individuals officially designated as terrorists.

Use of the OFAC list by private companies for similar screening has caused innocent people to be flagged as terrorists, creating problems with everything from buying a car to getting a job. This led the Lawyer's Committee for Civil Rights of San Francisco Bay Area (LCCR) to file a lawsuit against the Treasury Department on May 16 to force disclosure of public records that would document the extent of the problem. This raises the question of why the IRS should expand its screening program before fundamental problems with the lists are addressed, including lack of a process to remove erroneous listings.

The TIGTA report primarily addressed inefficiencies in the IRS process, including failure to automate its list checking and manually screening tax-exempt status applications (Form 1023) and annual information reports (Form 990) for "Middle eastern sounding names." It based its recommendations on **two questionable assumptions**:

- That use of the OFAC list with 1,600 names instead of the TSC list, which has over 200,000 names, "increases the possibility of identifying individuals already known to be or suspected of being involved in terrorist-related activities"
- That charities and nonprofits are a "significant source of alleged terrorist activities."

The Treasury Department has never provided documentation to back up its claims that the charitable sector is a significant source of terrorist financing or activity. It is equally possible that expanded list checking would not produce terrorist links, since the U.S. nonprofit sector is not a significant source of terrorist financing. In fact, only six of the 43 charities on OFAC's list are based in the United States and subject to IRS regulation.

The report recommended that the IRS Director of Exempt Organizations, "in coordination with key IRS and external stakeholders, develop and implement a long-term strategy to automate the process used to initially identify potential terrorist activities related to tax-exempt organizations" and "evaluate whether more comprehensive terrorist watch lists, including any applicable TSC information, should be used ..." The IRS has accepted the recommendations and "agreed to meet with Federal Bureau of Investigation personnel to evaluate how the TSC information may serve their needs and will evaluate whether other, more comprehensive terrorist watch lists can be used."

By agreeing to automate its process, whatever watch list the IRS uses will be checked

against data submitted in Forms 1023 and 990, including:

- names, titles and addresses of officers, directors and trustees
- names and addresses of the five highest paid employees and independent contractors
- contributors of more than $5,000 per year.

The question then becomes whether the results will provide useful leads to the IRS Criminal Investigation Division or FBI. TIGTA assumes that the minimal results to date are due to the inefficient manual system and use of the smaller OFAC list. The report says that the IRS only identified 93 potential connections between October 2005 and September 2006 based on Form 1023. Of these, only three merited further review, and one was cleared and granted tax-exempt status. The other two were still under review as of December 2006. List checking against Form 990 between April 2005 and October 2006 produced 201 potential connections, and further review revealed that none were positive matches.

The OFAC list is composed of "Specially Designated Nationals and other persons whose property is blocked, to assist the public in complying with the various sanctions programs administered by OFAC." The designation process has been criticized for being arbitrary, using secret evidence and lacking a meaningful independent review of OFAC decisions. The larger TSC list combines data from federal agencies, states, and local government and the FBI's massive Terrorist Identities Datamart Environment (TIDE). According to a March 25, 2007, *Washington Post* article "Terror Database has Quadrupled in Four Years," TIDE is a huge database used by various agencies to create watch lists. Its manager, Russ Travers, told the *Post*, "The single biggest worry that I have is long-term quality control."

This raises legitimate questions about whether the IRS should use the expanded list. The lack of standards and the inability of erroneously listed persons to get taken off the list create huge potential for mistakes and negative consequences for innocent victims. This has been amply demonstrated with the OFAC list. A report from LCCR details multiple examples of how many Americans are being denied jobs and various services because their names are similar to others who are designated. After Treasury failed to respond to its Freedom of Information Act requests to learn more about these impacts, LCCR sued to force further disclosure. The complaint notes that Treasury has no process for removing names placed on the list erroneously, or for distinguishing common names similar to those on the list, saying "An increasing number of private companies, including banks, mortgage companies, car dealerships, health insurers, landlords and employers screen consumers names against the OFAC list . . . Consumers discover the OFAC list when they are told that they cannot make a purchase, open an account or do business because their name appears on a terror list."

Use of additional lists can only exacerbate the problems experienced with the OFAC list. For example, adding names from state lists could cause nonviolent advocacy groups to be

flagged. Another *Washington Post* story "Ala. Ends Terror Watch List," published May 28, 2007, details how a state terror list had to be taken down from the Web because it listed environmental, gay rights and other groups.

Congress Passes Supplemental; Cease-Fire in the Capital

The struggle between Congress and the White House over the $120 billion supplemental war funding bill ended last week when, on May 24, Congress sent President Bush a version of the bill that he signed into law. The final bill (H.R. 2206) — the largest supplemental spending bill in the history of the United States — also raises the minimum wage for the first time in over ten years, a fact that seems to have been lost in national news coverage.

Bush vetoed Congress' first supplemental bill on May 1 because the legislation included a timetable for the withdrawal of U.S. soldiers from Iraq. Democrats in Congress removed those timetables and did not include any language about redeployment of soldiers out of Iraq, but did provide benchmarks for the Iraqi government to meet.

The supplemental, which provides funding for four months, specifies 18 political and legislative benchmarks applying theoretically to the Iraqi government. President Bush is also required to issue periodic reports on Iraq's progress, starting in late July. If the Iraqis fall short, they could forfeit U.S. reconstruction aid, though the president is free to waive any consequences the Iraqis might face.

Despite the final compromise with the president over the bill, 63 percent of Americans believe that U.S. soldiers should leave Iraq by the end of 2008, according to a *New York Times*/CBS News poll published May 25. And many key legislators in Congress were also less than pleased, including Appropriations chair David Obey (D-WI), the mastermind behind the compromise. Obey said:

> I hate this agreement. I'm going to vote against it even though I negotiated it.... But I take some comfort in the knowledge that even Babe Ruth struck out more than 1,300 times.

After the House vote on the bill, Speaker Nancy Pelosi (D-CA), who voted against the measure, sought to assure antiwar Americans, saying the debate over the war will continue. Pelosi was referring to the upcoming defense appropriations and authorization bills as well as other legislation that Congress will consider throughout the rest of 2007.

The Senate vote was 80-14. Unlike the House, where 140 Democrats opposed the measure and 86 supported it, Senate Democrats supported the bill 36-10. An exception was Illinois Sen. Barack Obama ☼, who said, "This vote is a choice between validating the same failed policy in Iraq that has cost us so many lives and demanding a new one.

And I am demanding a new one."

The bill provides the full complement of the war funding the president says is needed for the rest of Fiscal Year 2007. Most of the funding, just under $100 billion, goes toward continued military operations in Iraq and Afghanistan; non-military spending is spread among:

- Gulf Coast hurricane recovery ($6.4 billion)
- emergency aid to farmers ($3 billion)
- conversion of closing U.S. military bases ($3 billion)
- drought and natural disaster relief ($1 billion)
- improvements to mass-transit and port security ($1 billion)
- emergency road repairs ($0.9 billion)
- children's health care ($0.6 billion)

Additional domestic spending items cover state HIV grant programs, mine safety research, youth violence prevention activities, and pandemic flu protection.

Less noticed, with all the attention focused on the war, is the bill's federal minimum wage package, which phases in an increase to $7.25 an hour from $5.15 over two years, accompanied by a $4.8 billion package of business tax cuts that are fully offset. Congress had not changed the minimum wage in a decade, the longest such stretch since a federal minimum was established in 1938. Yet the provision was so low-profile in the debate on the supplemental that even longtime champion of the increase, Sen. Edward Kennedy ☼ (D-MA), voted against the bill.

While the supplemental funding debate has ended, there is little doubt the issue of removing American soldiers from Iraq and the general course of the war will be taken up again in Congress with the FY 2008 defense authorization and appropriations bills to be debated this summer.

Congress Approves Budget Resolution

On May 17, Congress achieved a basic benchmark of responsible fiscal governance — passing a final budget resolution. While this accomplishment has become somewhat of a rare event in Washington (spending in three of the past five fiscal years has not been guided by a budget resolution), and the votes were close (Senate 52-40, House 214-209), Democrats were able to reach final compromises on a few contentious issues.

The budget resolution is a blueprint for government spending for the upcoming fiscal year and the four subsequent years. The final FY 2008 resolution establishes a $954 billion discretionary cap for the twelve federal spending bills that will be passed later in 2007, which is $21 billion higher than the president's request. The House and Senate

appropriations committees can now officially begin their work for FY 2008.

The fiscal 2008 budget also returns strong "pay-as-you-go" (PAYGO) rules to the Senate. With slight differences in the time frames to which the rules apply, the Senate's version mirrors the PAYGO rules adopted by the House earlier this year as part of the Democratic leadership's new rules package.

In addition to Senate PAYGO rules, the budget:

- Significantly increases funding for children's health care, education, and veterans health care
- Calls for a one-year "patch" for the AMT
- Increases the national debt limit to $9.8 trillion, an increase of $800 billion
- Fully funds the president's request for war spending through Fiscal Year 2009

Before the House and Senate agreed to the spending blueprint, conferees had to iron out a few key differences between each chamber's initial budgets.

Discretionary spending caps: The Senate's version called for $948.8 billion in discretionary spending. However, the final total, $954 billion, is much closer to the House's initial request of $955 billion. This discretionary spending cap is $21 billion higher than the president's $933 billion suggestion.

OMB Director Rob Portman issued a pre-emptive veto threat on May 11 in a letter to House Budget Committee Chairman John Spratt (D-SC). In the letter, Portman said he would recommend the president veto "any appropriations bill that exceeds [the president's] request." Portman was referring to spending bills that are developed later in the year that derive from the limits set by the budget resolution.

Baucus Amendment: The Senate's budget contained a provision, known as the Baucus Amendment (named for the sponsor, Sen. Max Baucus ☼ (D-MT)), that would claim the projected $132 billion surplus in fiscal 2012 for additional tax cuts aimed at the middle class and a further roll-back of the estate tax for the wealthy. The amendment, which reduces the projected surplus to $41 billion, was approved by conferees in the final version, but the future tax cuts will still face PAYGO rules and a so-called "trigger" in the House. The House trigger mandates that future tax cuts not exceed the lesser of either $179.8 billion or 80 percent of the 2012 surplus and requires that the surpluses currently projected for 2012 actually materialize.

Spratt describes the budget as "not the perfect solution, but it is a long step in the right direction." The fiscal 2008 budget signals a commitment to fiscal responsibility while increasing funding for national priorities. But perhaps more importantly, by establishing a spending framework and implementing PAYGO rules, the budget serves as a guide by which these goals can be met.

Congress Demands Answers to USDA Security Breach

On April 13, a user of FedSpending.org, an online database on government spending run by OMB Watch, discovered that the U.S. Department of Agriculture (USDA) was publishing personally identifiable information about a loan she received from the agency.

The data in question appears in the Federal Assistance Award Data System (FAADS), which is a government database of all federally provided financial assistance (not including procurement). The database is run by the U.S. Census Bureau. FedSpending.org makes FAADS and publicly available data about government contracts accessible to the public in a searchable format in order to shine a light on government spending patterns. The individual found her Social Security number embedded in a field that provides a unique identifier about the financial award. After the breach was discovered, the FAADS database was completely removed from the Internet, and USDA and the Census Bureau began to request other institutions who posted the data to remove it from the public sphere. (Read more about OMB Watch's involvement in and response to this issue.)

On April 27, Sens. Barack Obama (D-IL) and Tom Coburn (R-OK) wrote a letter to USDA Secretary Mike Johanns stating that the disclosure of personally identifiable information was "improper and unacceptable." Obama and Coburn called on USDA to provide three things by May 18:

1. An assessment of the harm caused by disclosing Social Security numbers and a report on utilization of the credit monitoring service;
2. A report on what is being done to ensure that data security problems are fixed; and
3. A detailed plan and timeline for adopting a new unique identifier without disclosing personally identifiable information.

On May 2, at the request of Rep. Zack Space (D-OH), the House Agriculture Committee held a hearing to review the release of personal information by the USDA. At the hearing, USDA Chief Financial Officer Charles Christopherson, Jr. testified about the incident, providing additional information and some answers for Obama and Coburn. Christopherson testified that since first being notified of the breach, the USDA had narrowed its estimate of the number of affected individuals from 93,000 down to 38,700. These individuals participated in one of two different loan programs within the USDA — the Farm Service Agency and Rural Development.

The USDA said it contacted each of the affected individuals by mail from April 23 through May 1 to notify them of the security breach and offered free credit monitoring services to all those affected for 12 months.

While USDA testified it acted quickly to discover the extent of the problem and identify solutions, it attempted to downplay the breadth of the security issue. USDA testified it knew of 92 entities or individuals who had signed up to receive quarterly updates about FAADS data from the U.S. Census and that USDA had begun contacting each of them. At the time of the hearing, USDA said it had been able to contact 65 percent (58) of those entities. Most committee members, especially Rep. Earl Pomeroy ☼ (D-ND), were not at all satisfied with the 65 percent success rate. Unfortunately, USDA implied this was the extent of the entities that had downloaded the data from the U.S. Census website and possibly still had copies of the database.

In truth, the USDA has absolutely no way of determining the number of times the data had been downloaded or the number of people who have copies of the older data that contained personally identifiable information. There is no requirement to sign up or register to download the information from the Census or FedSpending.org websites. USDA could have made a more accurate estimate of the exposure of this data by compiling website visit statistics for the FAADS section of the Census website and other popular sources of the data like FedSpending.org. In the month of April alone, there were over 680,000 searches of the FAADS section of FedSpending.org.

Currently, the USDA has regenerated unique identifiers for the data in question and the Census Bureau is reloading the FAADS database. The Department of Commerce (where the Census is located) claims all FAADS data from 1996 through the third quarter of 2006 will be made available again through the FAADS database on the Web by June 1.

Congressional Hearing Reveals Flaws in Outsourcing Tax Debt Collection

On May 23, the House Ways and Means Committee heard testimony on the Internal Revenue Service's (IRS) private debt collection program that lets outside contractors pursue federal tax debts. At the hearing, Chairman Charles Rangel (D-NY) requested that the IRS not issue additional contracts to private collection agencies (PCAs).

The hearing resulted in an extensive discussion of the costs and benefits of the program, as well as a deeper understanding of how the program works and what is known about its results since it began in September 2006. The hearing's witnesses often made the point that IRS employees could perform the debt collection work more effectively, cheaper, and safer than the PCAs.

Nina Olson, chief of the National Taxpayer Advocate Service, an independent agency within the IRS to protect and resolve taxpayer issues, opposes the program. She testified that IRS employees are more productive in part because they can use tools that PCAs cannot. The only way PCAs can bring taxpayers into compliance is to make telephone calls and send letters to noncompliant taxpayers. PCAs have access to only limited information about taxpayers, out of concerns over taxpayer privacy. They are not

empowered to enter into complex payment agreements. IRS employees, on the other hand, can see a taxpayer's complete records and are empowered to make special arrangements when required by circumstances. Olson testified that contrary to claims that the cases that have been outsourced are "easy," many require the discretion and personal information that only IRS employees can provide.

As a result, Olson said IRS employees bring in $20 for every dollar IRS spends, whereas PCAs bring in only four. Acting Commissioner Kevin Brown, however, said that the proper ratio for work done by IRS employees was actually closer to 13:1.

Without these tools, PCAs have trouble communicating with taxpayers. When PCAs call taxpayers by phone, they must confirm whom they are speaking with, but they cannot reveal private information about the tax debt they are pursuing. To confirm their identify, the taxpayers — on faith — have to divulge their Social Security numbers over the phone, which the PCA representative will then compare to his or her copy of the taxpayer's Social Security number.

Rep. John Lewis ☼ (D-GA) presented disturbing audio tapes of phone conversations between PCAs and taxpayers, as well as answering machine messages PCA representatives left for taxpayers. (See the committee's written transcripts.) PCA employees did not identify themselves, the nature of their business, or the purpose of their calls, and haggled with taxpayers to obtain their Social Security numbers. The taxpayers in the conversations refused to reveal their Social Security numbers and responded angrily when PCA employees asked repeatedly for the numbers but did not disclose the purpose of the conversations.

Most would agree this type of interaction is unacceptable, but PCAs claim it is unusual. Witnesses who supported the program cited a survey that found taxpayers who had been called by the PCAs reported a 94 to 96 percent "overall satisfaction" rate. The report was conduced by the PCAs themselves, however, and IRS employees typically score in the same range.

Further casting doubt on the validity of the survey cited, Gregory D. Kutz of the Government Accountability Office (GAO) testified the PCAs used flawed methods when they obtained data for the survey. The three PCAs administered the survey only for the cases where the taxpayer was cooperative. Each used different methods to select respondents, and only taxpayers whose identities had been confirmed were surveyed. What's more, GAO was unable to verify the results of two of the surveys, as the PCAs failed to keep the necessary records. Kurtz testified that the results of the survey were not valid because of these methodological flaws.

Thomas Penaluna, the president of the CBE Group, a PCA, testified there has been only one complaint against the PCAs that IRS has been able to validate. However, IRS evaluates complaints only when PCAs "self-report" them, and Olson testified the IRS uses a narrow definition of both what a complaint is and what a valid complaint is.

(Examples of complaints.)

Chairman Rangel questioned Brown, the acting commissioner, about the incentive structure under which PCAs operate to collect taxes. Rangel proposed that because the private company gets to keep 21 to 24 percent of the taxes it is able to collect, the situation creates an adversarial relationship between the taxpayer and the PCA.

IRS employees, on the other hand, are prohibited from being compensated based on how much money they bring in as an individual in order to prioritize customer service and preserve taxpayers' rights. This creates an environment where the IRS can meet the needs of both the taxpayer and the federal government, while private companies have incentives to do whatever they can to bring in as much money as possible.

Underfunding the IRS

Brown, who supports the program, claimed underfunding of the collection function of the IRS made it necessary to outsource debt collection. Even if Congress increased the collection function's budget, Brown said these cases would not be pursued, as IRS would rather use the additional funding to pursue cases that would produce a high yield. According to Brown, the average tax owed by taxpayers whose cases are handled by PCAs is about $5,000.

Some members questioned why Congress had not fully funded the collection functions of the IRS, which would allow the agency to pursue all cases, including those that have been outsourced. Brown acknowledged that if IRS were fully funded, it would not need to run the outsourcing program.

The IRS has spent $71 million to get the program started, while PCAs have collected only $19 million, $3 million of which has been kept by the PCAs. If that money had been spent on IRS employees, by the IRS's rough return-on-investment ratio, the agency could have brought in $962 million.

States Battle Administration on Vehicle Emissions

At least 12 states are considering developing regulations for vehicle greenhouse gas emissions that would exceed federal standards. These states cannot promulgate the rules because the primary federal framework for air pollutant regulation, the Clean Air Act, reserves the federal government's right to block state efforts. Critics are charging the Bush administration with impeding the environmental progress of states and delaying meaningful regulation of vehicle emissions.

In 2002, California Gov. Gray Davis (D) signed into law the California Clean Cars law. The legislation called for state regulators to impose strict emissions standards for new vehicles beginning with model year 2009. Eleven other states (Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island,

Vermont and Washington) have adopted similar legislation. Various state agencies are seeking to fully enforce the Clean Cars laws, but their plans require federal approval.

The controversy raises concerns over the sovereignty of the states in pursuing environmental regulations stricter than federal standards. The supremacy clause of the U.S. Constitution reserves to the states a wide range of powers for which the federal government isn't given specific constitutional authority, but the debate over federal versus state roles has continued for most of our nation's history. In the area of environmental regulation, scholars have traditionally viewed the states as having rights to adopt standards which go beyond what the federal government has mandated.

However, the Clean Air Act includes language specifically forbidding states from pursuing emissions regulations for motor vehicles. Section 209 of the act states: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines." This was primarily inserted so car manufacturers did not face different standards in various parts of the country.

The act does provide a caveat allowing the federal government to waive the provision. Historically, the U.S. Environmental Protection Agency (EPA) has granted waivers to the states to allow them to implement state-specific regulations. For example, in 2006, EPA granted a waiver to California allowing the state to require on-board displays to monitor emissions from certain diesel trucks.

California requested a waiver in December 2005 in order to pursue its broader vehicle emissions plans, but EPA has yet to decide on the request. If EPA grants California a waiver, it will set the precedent for other states to request waivers to enforce stricter standards, using California's approach as a model. EPA opened the waiver request for public comment and has held two public meetings. The agency has not committed to a timetable for a decision.

Recently, the call for a decision by EPA has grown louder in light of an April 2 U.S. Supreme Court opinion , in which the court found greenhouse gas emissions from vehicles should be studied for harmful effects. If emissions are determined to be harmful air pollutants, they would require regulation under the Clean Air Act. The Bush administration had previously contended greenhouse gases could not be regulated legally under the act, so EPA's waiver authority would not have applied.

In an opinion column published in *The Washington Post*, Govs. Arnold Schwarzenegger (R) of California and Jodi Rell (R) of Connecticut chided the Bush administration for failing to grant or even act on the waiver request. The governors wrote, "It borders on malfeasance for [the federal government] to block the efforts of states such as California and Connecticut that are trying to protect the public's health and welfare."

California has indicated it will file suit against EPA if the agency does not decide on the

waiver in the coming months. On April 25, Schwarzenegger sent a letter to EPA Administrator Stephen Johnson warning him of California's intent to sue if EPA does not make a decision by the end of October.

Critics have also charged the Bush administration with employing delay tactics on developing policies to reduce greenhouse gas emissions. By not deciding on California's request, the administration is further delaying meaningful policy on vehicle greenhouse gas emissions, which it has failed to regulate over the past six years. In a statement, Environmental Defense Senior Attorney Vickie Patton said, "It's time for this administration to give states the green light to fight global warming instead of burying their plans in bureaucracy."

The standoff between EPA and the states comes as President Bush recently signed Executive Order 13432 instructing federal agencies, including EPA, to develop emission reduction policies. Bush issued the E.O. in response to the Supreme Court ruling.

Bush's E.O. and accompanying statements outline a process for studying emission regulations for the remainder of his administration. The E.O. calls for collaboration among EPA and the Departments of Defense, Agriculture and Transportation as well as the White House Office of Management and Budget and Council on Environmental Quality.

However, at no point has the president addressed the issue of California's waiver request. Permitting the states to move forward would allow vehicle emission regulation to begin almost immediately. While the Clean Air Act does reserve the administration's right to deny California's request, environmental federalism principles, a precedent of granting waivers and the Supreme Court's decision strengthen the argument of the states.

Senate Watching Carefully as Risk Guidelines Reemerge

Two senators sent a letter to White House Office of Management and Budget (OMB) Director Rob Portman urging OMB to abandon its plans for government-wide risk assessment standards. The letter comes shortly after the White House indicated it may renew its efforts on finalizing the standards.

In January 2006, OMB issued its Proposed Risk Assessment Bulletin. The Bulletin calls for strict and uniform standards for agency risk assessments. Federal agencies use the process of risk assessment to evaluate the extent to which public hazards may adversely affect health, safety and the environment. Risk assessments are important to scientific and technical understanding of a wide array of issues. They may also be a component of the cost-benefit analyses OMB requires for many proposed regulations.

OMB subjected the Bulletin to a notice-and-comment period and a peer review. Both

commenters and peer reviewers found fault with the proposed guidelines. In comments, OMB Watch and Public Citizen argued the Bulletin, if finalized, would "hinder agency response to risks facing the public" and "taint science with White House politics." The Bulletin was also consistently criticized for reducing agency discretion and attempting to institute a one-size-fits-all approach across a wide range of scientific disciplines and their respective risk assessment methods.

The peer review produced the most damaging criticism of all. OMB asked the National Research Council (NRC) — an arm of the National Academies of Science often providing science policy advice to decision makers — to peer review the Bulletin. In January 2007, NRC completed its review and issued a stinging rebuke.

NRC did not oppose the idea of OMB guidelines on risk assessment but determined the Proposed Risk Assessment Bulletin, in its current form, "could not be rescued." NRC criticized the Bulletin on specific matters such as its manipulation of statistical risk interpretation, which could discount vulnerable populations. More generally, NRC criticized the Bulletin's definition of a risk assessment — which incorrectly defined it as a document instead of a process. Ultimately, NRC found that "the OMB bulletin is fundamentally flawed and recommends that it be withdrawn." It is rare for NRC to make such strong recommendations.

In response to the peer review, OMB tabled the proposal. Lawmakers on Capitol Hill supported withdrawal of the Bulletin. Rep. Bart Gordon (D-TN) said, "Congress has repeatedly rejected one-size-fits all approaches to developing scientific and technical information." He went on to say, "OMB should withdraw this Bulletin promptly and abandon its attempts to micromanage agencies' work."

The issue of the Bulletin did not emerge again until May 9. In an interview with BNA news service (subscription), Susan Dudley, the new, recess-appointed administrator of OMB's Office of Information and Regulatory Affairs, indicated the White House may make a renewed push on the Bulletin. In the article, Dudley is quoted as stating, "The National Academies didn't say 'you shouldn't do this.' They said 'this is a good idea but here are some problems.'" Dudley's statement appears to be at odds with the written recommendations of the NRC peer review.

On May 14, unrelated to the Dudley statement, Sens. Jeff Bingaman (D-NM) and Joe Lieberman (I-CT) sent a letter to Portman urging OMB to permanently withdraw the Bulletin. The letter extensively cites the flaws identified by NRC. In concluding the letter, the senators state, "Finalizing the proposed OMB guidance would impede federal agencies' ability to develop public health and environmental protections, promote public safety, encourage good business practices, improve consumer protections, and efficiently use taxpayer funds."

The fate of the Risk Assessment Bulletin is unclear. However, it is quite likely OMB will make a concerted attempt to impose some form of risk assessment guidance before the

end of the Bush administration. The letter from Bingaman and Lieberman indicates OMB will not be able to do so without Congressional scrutiny, especially since Lieberman chairs the Senate committee that oversees OMB.

Improved FOIA on Hold

On April 12, the Senate Judiciary Committee unanimously passed the Openness Promotes Effectiveness in Our National (OPEN) Government Act, sponsored by Sens. Patrick Leahy (D-VT) and John Cornyn (R-TX). However, the bill is now stuck after an unidentified senator placed an anonymous hold on the legislation that would improve the government's implementation of the Freedom of Information Act (FOIA). Increasing pressure is being brought to bear on the Senate to uncover the hold and move forward with the bill.

The hold prevents the bill from moving forward in the Senate under unanimous consent procedures, even though the House passed similar legislation, the Freedom of Information Act Amendments of 2007, on a strong bipartisan vote of 308-117 on March 14. Placing a hold on legislation is part of the Senate's unwritten code, in which a senator indicates that he or she objects to the legislation and wants it considered under regular procedures. Under regular procedures, which would require floor time for debate, amendments would be in order, and it would be possible for the bill to be filibustered. Such holds are often followed by the concerned senator working with the bill's sponsors to make the fixes that allow non-controversial bills to move forward. On the other hand, if the senator placing a hold chooses to remain anonymous, there is little that the sponsors of a bill can do, especially since it is very hard to use floor time in the Senate for non-controversial bills. In essence, an anonymous hold can become the death knell for non-controversial legislation.

This particular hold has attracted the attention of numerous public interest groups. More than 100 groups signed on to a letter asking Senate leaders to pass the OPEN Government Act as soon as possible. The groups, including Public Citizen, the National Treasury Employees Union and OMB Watch, claim, "FOIA's promise of ensuring an open and accountable government has been seriously undermined by the excessive processing delays that FOIA requesters face across the government." The letter was sent to Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY).

The Society of Professional Journalists has established a webpage to encourage people to help identify the anonymous senator responsible for the hold. Those interested in participating are encouraged to contact their senators and inquire if they are responsible for the hold. As Senate offices go on record as not being the source of the hold, the SPJ will eliminate them as suspects. A similar effort by bloggers a few months ago was very effective in helping get the Federal Funding Accountability and Transparency Act passed

after a hold was placed on the bill.

Oversight and Accountability of the Intelligence Community Strengthened

On May 24, the Senate Select Committee on Intelligence passed the 2008 Intelligence Authorization Bill, which includes a number of important open government and accountability measures. Having failed to pass an intelligence authorization bill for the previous two years, the full Senate is expected to consider the measure later this summer, and the House passed the bill 225-197 earlier in May.

"Intelligence Authorization bills are the most important tools we have in Congress to strengthen existing programs and better prepare for the future," stated Sen. John D. Rockefeller IV (D-WV), chairman of the Senate Select Committee on Intelligence. "The Congress failed to pass an authorization bill the past two years. That is unacceptable, and Vice Chairman Bond and I are committed to making sure that it doesn't happen again."

The 2008 Intelligence Authorization Bill would institute a number of important open government and accountability provisions, requiring increased reporting and oversight of the intelligence community:

Inspectors General: creation of an inspector general in the Office of the Director of National Intelligence to oversee the intelligence community and of inspectors general at the National Security Agency (NSA), National Reconnaissance Office (NRO), Defense Intelligence Agency (DIA) and National Geospatial-Intelligence Agency (NGA).

Spending Disclosure: requirement to disclose the total amount of funding requested, authorized and appropriated for the intelligence community. This has been recommended by the 9/11 Commission and others but opposed by the White House.

Contractor Oversight: requirement for intelligence agencies to report to the House and Senate intelligence committees on the number of contractors used and in what capacity. As previously reported, intelligence agencies heavily rely on contractors but, even though a comprehensive study was recently completed, little to no information about such practices has been released.

Anti-spying: restatement that the Foreign Intelligence Surveillance Act is the exclusive means for wiretapping to gather foreign intelligence information. This would prevent the executive from collecting foreign intelligence through such programs as the now-defunct Terrorist Surveillance Program.

Disclosure of Reports: requirement to provide the House and Senate intelligence committees with all of the Presidential Daily Briefings (PDBs) concerning Iraq from 1997 to 2003 and a requirement to publicly disclose a declassified version of the executive

summary of a Central Intelligence Agency Inspector General report on the lead-up to 9/11.

The 2008 Intelligence Authorization Bill is expected to make its way to the Senate floor in June or July, but its eventual fate is uncertain. Sen. Kit Bond (R-MO), Vice Chairman of the Senate Select Committee on Intelligence, opposed some of the reporting requirements, including the requirement to make all PDBs available to the intelligence committees. "Unfortunately, a few amendments were adopted by the [Senate Intelligence] Committee that will make final passage more difficult, but we will continue to work to improve the bill when it gets to the floor and in conference."

Setback on Chemical Security

The effort to establish stronger chemical security measures suffered a significant setback the week of May 21 with the loss of a provision from the Iraq supplemental spending bill that would have prohibited the Department of Homeland Security (DHS) from preempting state law on matters of chemical security. In order to galvanize support for comprehensive chemical security reform, a group of public interest and environmental organizations wrote to Rep. Bennie Thompson ☼ (D-MS), Chairman of the Homeland Security Committee, and Rep. Sheila Jackson-Lee ☼ (D-TX), Chairwoman of the Homeland Security Subcommittee on Transportation Security and Infrastructure Protection. The letter encouraged the members to continue their work on ensuring strong chemical security protections.

In April 2007, DHS finalized chemical security regulations, which included assertions of authority to preempt state chemical security programs. OMB Watch commented on the shortcomings of the regulations. Preemption by DHS may block stronger state chemical security programs, thereby nullifying state programs like New Jersey's that require companies to consider or implement safer technologies and procedures.

Receiving bipartisan support, measures were passed in the House and Senate that would have prevented DHS from nullifying stronger state chemical security programs. Normally, matching provisions in House and Senate legislation all but guarantee the inclusion of the provision in the final legislation reported out of conference. But in this case, during negotiations between the White House and conference committee members, the provision was removed from the final version of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act (H.R. 2206). The *New York Times* reported that, in addition to the White House, the National Association of Manufacturers encouraged members of the conference committee to remove the provision.

Following that action, a coalition of environmental and public interest organizations encouraged the House Homeland Security Committee to move forward on comprehensive chemical security legislation. In a letter sent May 24 to Thompson and

Jackson-Lee, OMB Watch, US PIRG, Greenpeace, National Environmental Trust, United Steelworkers and other unions urged the members "to reintroduce comprehensive chemical security legislation at the earliest possible date."

The groups advocated for the reintroduction of the Chemical Facility Anti-Terrorism Act of 2006 (H.R. 5695), as reported out of committee last year, with important modifications on matters of state preemption, safer procedures and technologies, and accountability. Given the already full congressional schedule, the earliest Congress, which is currently in recess, might be able to begin discussions on new chemical security legislation would be several weeks from now.

Whistleblower Week in Washington Succeeds

The first national Washington Whistleblower Week (May 14-21) highlighted the importance of whistleblowers in our country and urged the Senate to pass new protections for whistleblowers. The week of events included participation by hundreds of whistleblowers and dozens of public interest organizations.

The highlight of the week was a series of panels, held by non-governmental groups in a Senate office building, addressing congressional oversight and legislative efforts to protect whistleblowers. The panel discussions raised topics such as political pressure to influence scientific research, oversight of the Federal Bureau of Investigation, and the performance of the Office of Special Counsel, which is responsible for reviewing whistleblower claims and enforcing the existing protections. The focus on the Senate was an attempt to build on the momentum of the House's March 14 vote of 331-94 to pass the Whistleblower Protection Act of 2007 (H.R. 985). Though President Bush threatened to veto the legislation shortly before it passed, the vote appears to indicate enough support to override a veto.

The focus on the Senate appeared to pay off. Whistleblower protections moved forward in the Senate following the Washington Whistleblower Week event. The Senate Armed Services Committee approved by voice vote an amendment to the National Defense Authorization Act for the Fiscal Year 2008 (S. 567) offered by Sen. Claire McCaskill ☼ (D-MO) to enhance whistleblower protections for employees of Department of Defense contractors.

The amendment, if signed into law, will allow contract employees to pursue jury trials in federal court if the Secretary of Defense fails to issue a timely administrative ruling to any allegations of reprisals brought to the Inspector General. Contract employees of other agencies such as the Department of Energy and the Nuclear Regulatory Commission have already had these protections. The whistleblower legislation passed in the House, H.R. 985, includes similar protections for contractor employees.

Coming to a Dump Near You — Nuclear Waste

The Nuclear Information and Resource Service (NIRS), a nonprofit organization, released a report on May 14 that exposes Department of Energy (DOE) practices of dumping nuclear-related waste in facilities that are unregulated and not designed for radioactive material. NIRS found that DOE's policies and procedures are geared toward the "release of radioactive waste, materials and property from regulatory control."

After reviewing seven DOE/NNSA (National Nuclear Security Administration) sites, NIRS' report discusses various loopholes through which these wastes have continued to be released into the environment.

- "Brokers" licensed to handle radioactive material sell or donate material to other processors not licensed
- Unchecked metal not directly part of nuclear processing (building structures, furniture) is regularly auctioned, exchanged to other federal agencies, donated or rented to public or private entities
- Radioactive waste is mixed with other wastes to be re-characterized as low-level radioactive waste with fewer or no release restrictions

In Tennessee, the leading state in licensing nuclear waste processors, four landfills have been approved to take "deregulated" nuclear waste from licensed processors. These processors frequently have the discretion to determine what waste they have to pay to have processed according to nuclear waste guidelines, and what waste can be considered deregulated. This creates a clear profit incentive for these processors to deregulate more waste.

NIRS found many examples of questionable material redirected into the public sphere. For instance, Los Alamos sends potentially contaminated metal to Rio Rancho landfill in Albuquerque, New Mexico, which is regularly canvassed by Habitat for Humanity for supplies. The landfill does not ensure that the potentially contaminated material is not taken by Habitat for Humanity. Instead, the burden is placed on Habitat for Humanity to know which supplies not to choose.

When DOE holds auctions for excess property, scanning is considered too time-consuming and is instead done "statistically and in conjunction with 'institutional knowledge' about the likelihood the items ever came in contact with radioactivity."

What is a "safe" radioactivity level, and who has the authority to deregulate radioactive material, is less clear than one would think. DOE permits "a few milliards per year" to be released for an "unlimited number of releases." The NIRS determined that a person has a 1 in 28,571 chance of developing cancer with a milliard of exposure every year for thirty-five years.

One of the pervasive threats to communities remains their ignorance. Most have no way

of knowing if radioactive material is in their local landfill. A 2000 DOE secretarial ban on recycling potentially radioactive metals included requiring "comprehensive and publicly available records" of radioactive releases. However, NIRS could not find any such records. Even more troubling, there is little information to discover even if it were accessible, as the NIRS report states that "there is *no cumulative* tracking, measurement, quantification, record keeping or reporting *on all of the DOE's radioactive releases.*" Whether or not communities are safe remains unanswerable.

EPA's Diagnosis of the Environment is Unclear

The U.S. Environmental Protection Agency (EPA) released its draft *2007 Report on the Environment: Science Report* on May 10. The draft version of the report, open for public comment until June 25, attempts to provide a "snapshot" of the current state of the environment and its impact on Americans' health.

The 2003 version of the report was roundly criticized for presenting data in an overly biased manner. Most notable in the 2003 controversy was the deletion of a section on climate change, which occurred after politically motivated edits by the Council on Environmental Quality made the section unusable.

The draft "Air" and "Ecological Condition" chapters of the 2007 draft both contain the welcome acknowledgment of the scientific reality of rising planetary temperatures and its "likely" human causes. However, the 2007 report falls short of calling this "climate change" and tempers the statement with a quote from the National Research Council: "We cannot rule out that some significant part of these changes is also a reflection of natural variability."

Ultimately, the 2007 report makes no conclusive statements about our environment's health. This is primarily due to a lack of both baseline and comparative data. Additionally, the report mostly considered trends over the past twenty years — a time frame suited to determining whether environmental policies have had an impact but not to providing an assessment of the environment.

To comment on the draft report, either use the main search page on regulations.gov to find the report (listed by its title), or use the "Advanced search" option in the upper left menu and select "Docket Search" for the Docket ID Number EPA-HQ-ORD-2007-0198.

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