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Lame-Duck Work Begins This Week

Today, Nov. 16, the 535 members of the 108th Congress reconvened to begin a post-election lame-duck session and complete their unfinished business. Their goal is to keep the session short and productive, yet this may be difficult as Republican leaders have failed to reach an agreement with the White House on a package that could bring the fiscal 2005 appropriations process to a quick conclusion.

Senate and House leaders hope to end the lame-duck session by the end of this week, so they will likely limit their work to completing the [nine remaining FY 2005 appropriations bills](#), and [increasing the debt limit](#). If there is a breakthrough between the House-Senate conferees on implementing the recommendations of the 9/11 Commission, that too will be taken up. And there remains a possibility of working on other items that could be completed if there is unanimous consent or broad agreement. Some of these might be riders on the appropriations bill, and there has been discussion about passing the reauthorization of the Individuals with Disabilities Education Act.

Congressional leaders, who failed to complete work on the appropriations bills by the end of the fiscal year, plan to package the nine remaining bills into one massive omnibus spending bill, which they hope lawmakers will approve early this week. Most of the work has been done behind closed doors over the past weeks by staff. One snag, however, is how to pay for additional programs -- the Senate wanted \$8 billion more in spending -- and still remain within the overall \$821.9 billion spending cap for the fiscal year. The White House and Republican leaders are trying to work out a deal, which will likely include an across-the-board spending cut. If such an agreement is not reached, Congress could instead pass a large continuing resolution (CR) to provide funding for the rest of the year for all agencies and programs that fall under the nine remaining bills. This strategy -- which in essence would provide funding for each program and agency -- is inefficient in that it runs the risk of not providing adequate resources to fully fund the necessary services. Ideally, each appropriations bill would have made it through conference separately before the fiscal year ended Sept. 30, avoiding the need for an omnibus spending bill or a CR. As congressional leaders scramble to finish business this week, keep in mind that countless programs and agencies are not receiving the debate and attention that is necessary when it comes to making key decisions on program funding levels.

Opposition Seen on Second Term Tax, Social Security Goals

With the election two weeks behind us, attention has shifted to what this administration plans to do in its second term. President Bush has specifically cited two major objectives: to make his tax cuts permanent, and to make significant changes in both the federal tax code and Social Security.

During his first term, Bush signed into law \$1.9 trillion worth of tax cuts, to take place over a 10-year period. Many analysts cite these the tax cuts -- far more than increased domestic spending or the war on terror -- for the federal budget's dramatic shift from a significant surplus to a record high \$413 billion deficit. If they are correct, making the tax cuts permanent could prove the biggest impediment to meeting the president's promise to cut the deficit in half over the next five years, a target that itself falls woefully short of solving the current fiscal crisis.

This shift is detailed in a [report](#) by the Center for American Progress. Another [analysis](#) by William G. Gale and Peter Orszag of the Tax Policy Center explains the relationship between fundamental tax reform and the proposed and enacted tax cuts.

Bush's other primary tax initiative is to overhaul and "simplify" the federal tax code. It is uncertain what the President will propose, although there is speculation that he will continue the trend to taxing wages, moving away from taxing investments. This will put greater burden on middle- and lower-income families that may not have the capital that wealthy families have. The administration may also propose to shift federal taxation away from income and more toward consumption. This would constitute a more regressive policy because it would increase the proportion of taxes paid by middle and lower income Americans, and reduce the proportion paid by those with higher incomes, who spend a smaller percentage of their income on consumption. Plans to overhaul the tax code would likely face great opposition, and it is unclear whether the president will pursue this "reform." A *Washington Post* [article](#) reported "many Republicans on Capitol Hill are worried about the political ramifications of overhauling the tax system." Pete du Pont, former Republican Governor of Delaware, said tax reform is difficult because "every group wants to protect what it has in the tax code."

The administration can also expect to face determined opposition if it pursues reforms to the Social Security system. While Bush has never been specific about his plans for Social Security, he has expressed interest in pursuing a plan to give workers the option of investing part of their Social Security payroll tax into private accounts. Rep. Robert Matsui (D-CA) echoed widespread skepticism for such a plan, saying, "privatizing Social Security will divert trillions of dollars from the trust funds and force significant benefit cuts." It is also likely such a proposal will increase the deficit unless additional revenue is raised or spending cuts are made.

Florida, Nevada Vote to Raise Minimum Wage by \$1

Although both states went to President Bush on Nov. 2, voters in Florida and Nevada approved state initiatives significantly raising the minimum wage by one whole dollar.

In Florida, 72 percent of voters supported raising the state minimum wage by one dollar an hour, bringing wage levels to \$6.15 per hour. Perhaps even more importantly for workers, this amount will be indexed for inflation every year, which makes it more progressive than wage policies in many other states. The Association of Community Organizations for Reform Now (ACORN), along with a coalition of unions and other liberal groups, sponsored and promoted the measure.

For more information on how the wage hike will positively impact Floridians, especially those with lower incomes, see a new [report](#) by the Center for American Progress.

Nevada voters also passed an initiative to raise the minimum wage by one dollar an hour, and to increase the level annually with increases in the cost of living. The measure passed with 68 percent approval.

Florida and Nevada join twelve other states that mandate a minimum wage above the level set by the federal government (\$5.15). These victories will help millions of workers achieve a greater quality of life by giving them greater resources with which to face the rising costs of living. They also serve to bolster the economies of these two states and serve as a model to inspire other states to take similar action.

Nuclear Commission Restores Portions of Online Library

The Nuclear Regulatory Commission (NRC) restored portions of its online reading room earlier this month shortly after security concerns prompted the agency to block public access. Only selected documents have been restored, although NRC asserts that the majority will be accessible within several weeks.

As reported in the last *OMB Watcher*, NRC discontinued public access to its entire online reading room Oct. 25 after media sources revealed the site might contain several documents useful to terrorists. This included floor plans and locations of nuclear materials. Instead of simply removing the "sensitive" documents, the agency blocked all public access to that portion of the site.

Although NRC quickly restored some documents, a [press release](#) explained that the remaining documents would be reviewed and reposted according to a schedule. The agency did not provide specific timeframes, although NRC prioritized the process to review hearing-related documents first, time-sensitive documents that need public review or comments second, and other nuclear reactor documents and non facility-specific documents third. NRC also reported that any information relating to nuclear materials "is expected to take longer."

There is no guarantee that all the information will be restored. NRC Chairman Nils J. Diaz stated that the agency "will withhold any information that could be useful, or could reasonably be expected to be useful, to a terrorist." It is unclear what standards the agency is using to determine what information could be useful to a terrorist. The agency also fails to explain the legal justification for withholding large amounts of information from the public.

California Passes Prop. 59 in Win for Open Government

California citizens passed a new open government proposal on Nov. 2 that embeds requirements for open records and meetings into the state constitution. The measure, Proposition 59, passed with 83 percent supporting it.

Although California has state open records and meetings laws, they have been weakened by court decisions, agency interpretations, and other actions to the point that adequate access to government information is not guaranteed. Both the California House and Senate unanimously passed the measure earlier this year. Specifically, the amendment will:

- provide public access to government meetings and records;
- assume a broad interpretation for furthering public access and a narrow interpretation for limiting it;
- require any future laws and rules that limit access to justify the limitation; and
- preserve constitutional rights including limitations that restrict access to certain government meetings and records, and rights to privacy, due process and equal protection.

The amendment does exempt the state legislature's records and meetings.

Proposition 59 received support from news and journalist organizations, academics and unions. Access organizations had been trying to get such a measure on the state ballot for several years. Florida, Louisiana, Montana and New Hampshire already have similar constitutional amendments. For more information visit the [California First Amendment Coalition](#) website.

Minnesota Legislature Restricts Media Access to Polling Sites

The Minnesota Legislature passed a law that greatly restricts media access to polling sites on election days. The law passed with bipartisan support just hours before the close of the 2004 legislative session. The law has been widely regarded as a "housekeeping" elections bill for Minnesota Secretary of State Mary Kiffmeyer, who requested the restrictions.

The law requires that the media obtain letters of prior approval from city election clerks or from county auditors before entering a polling site, where they can stay for no longer than 15 minutes.

Journalists argue that the new law is dangerous and restricts public access to the election process. State law still allows political parties to closely monitor elections and raise objections to voter qualifications. Journalists claim that partisan officials pose greater threats to the election process, especially when the media is barred from reporting such problems.

"It's an example of a law that's both mystifying and counterproductive if what we want is a system that is open and aboveboard," *Star-Tribune* editor Anders Gyllenhaal stated.

Critics of the new law assert that Minnesota's polling site restrictions are among the strictest in the nation. In contrast, neighboring Wisconsin permits any individual access to all polling places during the election process for observation.

The law created problems on Nov. 2 as cities and counties struggled to properly interpret the new restrictions. For instance, the city of Minneapolis allowed blanket media access in every precinct. Hennepin County officials, on the other hand, granted local election judges control over the process. Cass County officials requested the advice of the Minnesota Attorney General's office in how to implement the new law.

Halliburton Whistleblower Cut Out of Contract Procedures

The Army Corps of Engineers violated procurement rules in negotiating its contract with the Halliburton Corporation in early 2003, according to the Corps's chief contracting officer -- Bunnatine Greenhouse. She asserts that after expressing numerous objections to Halliburton contracts, she was threatened with demotion and was pressured to approve the contracts by her superior.

Headed by Dick Cheney until he was elected U.S. vice president in 2000, Halliburton was initially awarded a five-year contract to protect Iraq's oil assets. The Corps granted the \$7-billion contract to Halliburton without competition, claiming the war necessitated an expedited process. A public outcry forced the Pentagon to cut this contract short after nearly a year had elapsed and \$2.4 billion of the contract had been executed. The remaining work was put up for bid.

Greenhouse objected to Halliburton's role in both planning and implementing the 2003 contract, tasks usually distributed to two separate firms. Greenhouse also opposed the presence of Halliburton subsidiary Kellogg Brown & Root (KBR) officials at the meeting where the decision to award KBR the no-bid contract was made. Traditionally, the government uses bidding to ensure fair prices and to avoid waste. In addition to criticism from contracting officials, U.S. Army Corps of Engineers' dealings with Halliburton have drawn scrutiny from the Federal Bureau of Investigation (FBI). After Halliburton entered into Iraq and discovered minimal damage to oil wells, the Army shifted the contract from protecting oil assets to covering the transport of gasoline, kerosene and other fuels into the country for daily use by the Iraqi people. The Pentagon's inspector general and the FBI are conducting criminal investigations into allegations Halliburton overcharged the Army by as much as \$61 million by refusing to use cheaper fuel suppliers.

Another Halliburton contract has drawn the FBI's attention after the abrupt cancellation this past summer of a competitive process to award a follow-up contract to one Halliburton received competitively in 1999. Halliburton received the follow-up contract to provide food, fuel and logistics to U.S. troops in the Balkans through April 2005. The Pentagon awarded the

contract without competition, and without Greenhouse's approval.

Terrorism Case Whistleblower Sues Justice Department

Former Justice Department lawyer Jesselyn Radack filed a lawsuit Oct. 28, claiming that the Department of Justice (DOJ) forced her out after she raised objections over the interrogation of "American Taliban" John Walker Lindh.

According to Radack, the DOJ's interrogation of Lindh, the American captured while fighting with the Taliban in Afghanistan, violated federal law. Even after Lindh's father retained a lawyer for him, DOJ officials interrogated Lindh without his attorney present. Lindh eventually pled guilty to aiding the Taliban and was sentenced to 20 years in prison.

The DOJ apparently attempted to cover-up the ethics violation by omitting files, including memorandums Radack had written regarding the improper interrogation, from the case file. Radack's e-mail correspondences addressing her legal concerns were never turned over to a criminal court, despite a court order that all internal documents be submitted. The secrecy surrounding the case made it difficult for Radack to know exactly which documents the judge received.

After pressing the issue through official channels, Radack claims she was threatened with a negative review and was told to leave the DOJ. She ultimately resigned in April 2002.

Radack later released her e-mail memorandums to *Newsweek* magazine, expecting to be protected by a federal whistleblower statute that protects individuals reporting government impropriety. Instead, the DOJ opened a criminal investigation into her disclosure and notified the bar associations of Maryland and the District of Columbia of her actions. Radack claims no private law firm will hire her until the matter is resolved.

This case involves two areas where the public's ability to receive important information has been significantly weakened -- homeland security and whistleblower protections. Since 9/11, the government has instituted new broad restrictions on information, even though an independent commission has concluded that excessive information restrictions contributed to the country's vulnerability to terrorist attack. Additionally, recognition and protection of whistleblowers, who are often the public's only hope of learning about the government's most egregious errors and injustices, has been declining. [Legislation](#) to strengthen these protections is currently before Congress, although it may not make it to the floor before this session ends. Without an open government, the public has no way of holding it accountable for its actions.

Nonprofits' Suit Opposes CFC Terrorist Watch List Policy

OMB Watch and [12 other nonprofits](#) filed suit against the Combined Federal Campaign (CFC) on Nov. 10, challenging their policy that requires participating charities to check their employees' names against government terrorist watch lists. The [complaint](#), filed in the federal district court for the District of Columbia, charges the policy violates the First Amendment rights of participating charities and was made illegally in secret.

The controversy began in July, when a *New York Times* article quoted the head of the CFC, Mara Paternoster, saying that each of the thousands of nonprofits participating in the CFC has an affirmative obligation to check their employees against government lists. In August the American Civil Liberties Union (ACLU) withdrew from the program in protest.

OMB Watch opted to remain a participant and issued a [statement](#) calling on CFC to change its policy. The statement said,

"This active obligation is misguided, unduly burdensome, and vulnerable to abuse for political purposes. The lists are notoriously fraught with inaccuracies and ambiguities, so there is no way to verify whether a name on the list is actually the individual encountered (they may coincidentally have the same name or may be using a different name but still be the person listed). Government watch lists change continually, so charities would have to check them continually, which they don't have time and resources to do. Compliance is simply impossible."

In September OMB Watch wrote a [letter to CFC](#) seeking clarification and asking a series of practical questions about the certification requirement. To date there has been no response and CFC has failed to issue any guidance for charities currently preparing applications for the coming year. Applications are due Jan. 31, 2005.

The ACLU is acting as lead counsel in the suit. See box at right for the full list of participating plaintiffs and their statements.

Nonprofits Came Out in Force This Election Season

Nonprofits across the spectrum came out this election season to help voters have a voice. As a result, the United States had a voter turnout of almost 60 percent, the highest since 1968. This election proved nonprofits can "help America vote."

When students at the State University College at Oswego encountered resistance from local boards of elections when they tried to register to vote, they were not surprised. In response, a number of students founded SUNY Rock the Vote Challenge, a voter registration drive involving 20 of the 64 SUNY campuses, with help from the New York Public Interest Research Group and other nonprofits.

This is one example of how nonprofits came out in force this election season, ranging from progressive election protection groups to evangelical churches. Nonprofits succeeded in getting people registered and out to vote, and serving as poll monitors. This election season nonprofits enabled people to give a voice to their beliefs. Many nonprofits offered resources to help other groups get involved. For examples see the [NPAction website](#).

[Electionprotection.org](#), a diverse coalition of nonprofits, gathered an unprecedented 25,000 volunteers who worked together to document thousands of voting problems around the nation and rectify many of them on election day. It remains to be seen how many of the flaws in the Nov. 2 vote were corrected in time to save legal votes, but there is no question that our election system is more robust due to the hard work and diligence of volunteers to not only "rock the vote," but to *protect the vote*.

Churches, who are tax exempt under 501(c)(3) in the [tax code](#), also worked hard to mobilize voters before and on Election Day. There was a huge leap in the intensity and breadth of involvement by religious organizations this election season. Said the Rev. Jerry Johnson, "I am going to try to motivate the pastors to do something, to not be silent, and to become engaged in a long-term process." However, some of this activity created controversy over whether it remained nonpartisan and consistent with the tax code.

Increased nonprofit activity has led to increased IRS scrutiny. The IRS says it is currently auditing 60 groups for potential violations of the ban on partisan election activities, including 20 churches. Since March, when a church in Austin allowed the Republican Party to hold a fundraiser in its sanctuary, [Americans United for the Separation of Church and State](#) has filed complaints with the Internal Revenue Service against seven houses of worship, charging them with failing to observe the limits on political activity by a tax-exempt, nonprofit religious organization. Two of those complaints involved clergy endorsing candidates from the pulpit, with one minister backing Kerry and the other supporting Bush.

There is a [bright line drawn by the IRS](#) on electioneering by 501(c)(3)s. Groups exempt under 501(c)(3) can talk about issues in an unlimited way, but they cannot urge people to vote for or against a candidate, directly or indirectly. This has become a controversial issue for some churches that want to change the tax code to allow church electioneering. See the [OMB Watch website](#) for more background.

Muslim Charity Seeks Release of Frozen Assets

Last month, the Department of Treasury froze the assets of the Islamic American Relief Agency (IARA-USA) after a raid on its office in Columbia, MO, and the home of its executive director. Last week, Shereef Akeel, a lawyer for the Muslim charity, applied for a license from the U.S. Treasury Department to free its frozen assets for the purpose of paying rent and utility bills.

The department had accused IARA of having raised more than \$5 million for terrorist causes. It did not automatically reject IARA's request, stating, "The Treasury thoroughly reviews all licensing requests to ensure that if the funds are unfrozen, they are used for legitimate purposes and serve the interests of the charity."

IARA-USA, with a nearly 20-year history of providing relief in famine- and disaster-stricken areas of Africa, Asia and Bosnia, denied the allegations. IARA in Khartoum, Sudan, issued a similar statement and denied ties to the Columbia group. Last year, the Better Business Bureau of Eastern Missouri and Southern Illinois found the group met 22 of its 23 standards for charitable solicitations.

The search warrants remain sealed, and the Treasury Department has so far refused to explain why it froze IARA's assets in the first place. (See [recent Watcher article](#).)

IRS Revises Application for Tax-Exempt Status for Charities, 501(c)(3) Groups

The IRS has released an updated version of the application for tax-exempt status for charitable, education, religious and scientific organizations. The [new Form 1023](#) and [instructions](#) are available on the Web, and the IRS will require their use after April, 2005. Page ten of the instructions describes the prohibition on partisan electioneering and the allowable legislative lobbying limits. A copy of Form 5768, the notice that a group will measure its lobbying by expenditures only, is included in the package. For more information see [IRS Frequently Asked Questions About Revised Form 1023](#) on its website.

Americans Vote to Protect Environment in Ballot Initiatives

Voters approved ballot measures on Nov. 2 that will strengthen environmental protections in several states.

Although the Bush administration's return to power does not bode well for the future of environmental protections, the success of these state ballot initiatives indicates that citizens remain committed to protecting the environment. While only a few states voted down ballot initiatives to strengthen environmental protections, several states passed major environmental measures that will, among other things, clean up hazardous waste, limit mining with cyanide, and protect public lands.

Victories

For the fifth time, Arizona voted down a proposition that would have allowed the government to trade public lands.

Residents of Colorado supported the Renewable Energy Requirement mandating that 10 percent of electricity produced by utilities that serve at least 40,000 customers come from renewable sources by 2015. The initiative will impact 80 percent of utilities providers in the state. Colorado joins 16 other states in requiring the use of renewable energy.

In Montana, 75 percent of voters agreed "to establish and provide a funding source for a noxious weed management trust fund." According to Montana State University researchers, "Noxious weeds are a serious ecological and environmental threat to the natural resources of Montana. Noxious weeds displace native plant communities (including endangered species), alter wildlife habitat, reduce forage for wildlife and livestock, and lower biodiversity." Though the fund has existed through legislation since 1985, the initiative amends the state constitution to provide for the fund, making it difficult for lawmakers to spend the money on other matters.

Montana also voted down an initiative to allow open-pit mining using cyanide ore-processing reagents. The vote reaffirms a 1998 decision to limit the mining of gold and silver using cyanide, which can cause severe water pollution. The failure of the initiative was a major victory for environmental advocates and shows citizens refuse to tolerate such highly toxic pollution, even in a tight job market.

In the state of Washington, 68 percent of the electorate voted to clean up hazardous waste in the state and to limit future dumping "until existing contamination was cleaned up." The initiative mainly applies to the Hanford Nuclear Reservation, a 586-square-mile site along the Columbia River that was first used during World War II to produce plutonium for atomic bomb development. The state initiative sets standards for cleanup, prohibits waste disposal in unlined soil trenches, and requires cleanup of tank leaks. Fifty-three million gallons of highly radioactive liquid, sludge and saltcake are currently stored at the Hanford facilities.

Rhode Island voted to issue bonds that would provide up to \$70 million to control water pollution.

Failures

An Oregon measure failed that would have required state forests to balance logging interests with environmental preservation. Another Oregon measure, which passed with 60 percent of the vote, would require that the government compensate landowners if regulation reduces the property value of the land. This "regulatory takings" measure does not apply to public health and safety regulation, but it does apply to environmental regulation that "restricts the use of the property and reduces its fair market value."

Utah voters defeated an initiative that would have generated up to \$150 million in bonds to support projects that "preserve or enhance" natural resources such as lakes, rivers, streams and wildlife habitats, as well as to "build local community facilities and improve natural history and cultural museums."

NPS Fails to Address Species Impacts of Snowmobile Trails

In the aftermath of two court rulings rejecting rulemakings on winter use plans for Yellowstone, the National Park Service is once again being challenged in court for failing to consider the effects on bison populations of winter use plans that accommodate snowmobile use.

Although media attention has focused on the Clinton administration's ban on snowmobiles in the Yellowstone area parks and the Bush administration's rollback of that ban, the initial impetus for the snowmobile rulemakings was the effect on wildlife of "trail grooming." Trail grooming is the practice of packing 25-foot wide paths, in essence creating roadways for snowmobiles. Although a variety of Yellowstone wildlife has experienced adverse consequences of trail grooming, the most dramatic consequence is that bison are attracted to the groomed trails and leave the protected park areas, making them vulnerable to slaughter.

After more than 1,100 bison were slaughtered in the winter of 1996-97, the Fund for Animals and other environmental groups challenged the Yellowstone winter use plans under the National Environmental Policy Act. The NPS settled with the groups, agreeing to prepare an environmental impact statement on trail grooming practices and the related policy of allowing snowmobiles into the parks. Subsequent rulemakings -- a Clinton administration decision to ban snowmobiles in favor of snowcoaches, and a Bush administration rollback of that ban -- were subject to court challenges [described here](#). Among other outcomes, a federal court ruled that the NPS had failed to address adequately the effects of trail grooming on bison migration patterns.

The NPS prepared a new environmental assessment and announced a continued preference for trail grooming and limited

snowmobile access. Even though a scientific assessment of trail grooming's effects on bison will not be available until March 2005, the NPS declared a finding of no significant impact ([FONSI](#)) that led to a [final rule](#) on winter use in the parks that permits continued trail grooming.

Alarmed that the new winter use policy still fails to address problems of trail grooming, the Fund for Animals [filed suit](#) on Nov. 4 challenging the new winter use plan as violating NEPA, the APA, the Organic Act, the Yellowstone Act, and previous court orders.

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