OMB WATCH
Promoting Government Accountability and Citizen Participation
ACTION CENTER | BLOGS | DONATE
The Watcher
October 23, 2007 Vol. 8, No. 21

In This Issue

While Feds Dither, States Move to Regulate Greenhouse Gases

The Kansas Department of Health and Environment (KDHE) has rejected an air permit for proposed power plants due to the threat of the resulting greenhouse gas emissions. The decision makes Kansas the latest state to take proactive steps to stem greenhouse gas emissions while federal agencies and Congress delay action and White House officials continue to question climate science.

On Oct. 18, KDHE denied a permit for the Sunflower Electric Power Corporation to build two large coal-fired power plants near Holcomb, KS. The plants would have combined to

emit 11 million tons of greenhouse gas emissions annually, according to KDHE.

In a statement announcing the decision, KDHE Secretary Rod Bremby said, "I believe it would be irresponsible to ignore emerging information about the contribution of carbon dioxide and other greenhouse gases to climate change and the potential harm to our environment and health if we do nothing." Kansas Governor Kathleen Sebelius (D), who has been described as a conservative Democrat, has expressed her support for the decision to reject the permit.

The controversy over whether KDHE should grant the permit had become a watershed moment for environmental policy in Kansas. While Sunflower Electric lobbied vigorously for its permit, the idea of two more major sources of greenhouse gas emissions raised the ire of many Kansans.

Now, KDHE's decision is being framed as a watershed moment for American environmental policy. The decision by KDHE to deny an air permit on the grounds that greenhouse gas emissions pose a serious danger to public health and welfare is the first of its kind.

Other states are also using regulatory strategies to attempt to control greenhouse gas emissions. California has approved a program that would allow the state to regulate greenhouse gas emissions from vehicle tailpipes. In December 2005, California petitioned the U.S. Environmental Protection Agency (EPA) for permission to enact its program, as the state is required to do under the Clean Air Act.

However, EPA has yet to issue a decision on the California petition. California is expected to file suit against EPA the week of Oct. 29 in an attempt to force EPA to grant its request, *The Los Angeles Times* reported. If EPA grants California's request, at least 11 other states could begin implementing similar greenhouse gas emission programs.

States are pushing hard for greenhouse gas emission regulation now more than ever, partially in response to an April U.S. Supreme Court decision in which the court found greenhouse gas emissions could be considered an air pollutant under the Clean Air Act, an assertion previously rejected by the Bush administration.

Although more than six months have passed since the high court's decision, EPA has yet to announce its plans to regulate greenhouse gases under the Clean Air Act. An EPA official has reportedly indicated the agency will pursue a regulatory scheme similar to that of California and the other states, wherein the agency would set targets to reduce emissions over time, according to BNA news service (subscription). More information on EPA's plans may surface when the agency releases its annual Regulatory Plan later in 2007.

Congress has only recently begun to make progress on greenhouse gas emission legislation despite the issue being a major tenet of the Democrats' campaign during their sweeping 2006 election victory. For example, on Oct. 18, Sens. Joseph Lieberman (I-CT) and John Warner (R-VA) introduced the America's Climate Security Act (S. 2191). The legislation

would establish a cap-and-trade system in which greenhouse gas emitters could buy, sell and trade emission credits. The total level of emissions allowed under the system would decrease over time. The proposed legislation received mixed reviews from environmental advocates. A subcommittee of the Senate Environment and Public Works Committee is scheduled to begin considering the legislation on Oct. 24.

Meanwhile, White House officials continue to make attempts at slowing greenhouse gas emission policies by questioning the underlying science. Many climate scientists, including those on the Nobel Prize-winning Intergovernmental Panel on Climate Change, have endorsed the notion of preventing warming of the earth by two degrees Celsius or 3.6 degrees Fahrenheit. President Bush's top science advisor, White House Office of Science and Technology Policy Director John Marburger III, said the goal "is going to be a very difficult one to achieve and is not actually linked to regional events that affect people's lives," according to *The Washington Post*.

Bush Administration Tries to Reverse Old-Growth Forest Protection Plan

The U.S. Bureau of Land Management (BLM) is trying to dismantle a 1994 landmark management plan that balances logging, endangered species and old-growth forest protections. BLM wants to revise the Northwest Forest Plan (NWFP) to allow logging on nearly one million acres of old-growth forest area included in the plan that protect habitats for species such as the northern spotted owl, salmon and other old-growth-dependent species. The proposed revisions ignore scientific recommendations, and the process appears to have been manipulated by Bush administration officials in Washington.

According to the National Center for Conservation Science and Policy (NCCSP), the U.S. Fish and Wildlife Service (FWS) in the early 1990s drafted but never approved a recovery plan to protect under the Endangered Species Act the northern spotted owl, threatened by extensive logging of old-growth forests. In 1994, the Clinton administration used the NWFP as the *de facto* recovery plan for the owl. In 2003, FWS was sued to force completion of a recovery plan.

In 2006, FWS convened a diverse group to develop a recovery plan, although the group was unable to reach consensus on specific habitat provisions. According to NCCSP, "Rather than send the draft recovery plan out for scientific peer review to resolve these disagreements, the draft recovery plan was rejected by high ranking officials within the Bush administration as not 'flexible' enough to allow the Forest Service and Bureau of Land Management to push through forest plan revisions that reduced old-growth protections." Officials in Washington ordered the group to develop a plan that didn't rely on the network of protected forests even though there was no scientific basis for the change in the conservation approach embedded in the NWFP.

There are a variety of forest management decisions tied to the recovery plan and the NWFP.

On Aug. 10, BLM released for public comment a Draft Environmental Impact Statement (EIS) for the Western Oregon Plan Revisions, part of the NWFP. According to an Oct. 18 *New York Times* article, the revisions call for a three-fold increase in logging in western Oregon. Logging interests and local governments, which share in the proceeds of timber sales, believe the revisions restore "the rightful primacy of logging on these tracts."

Scientists and environmental groups, however, argue that the revisions change the priorities established in the NWFP and will harm species dependent on old-growth areas for survival and threaten salmon stocks. Since the owl recovery plan is linked to the NWFP, scientists fear the revisions will dismantle habitat protections included in the plan. For example, 113 scientists sent a letter to Department of Interior Secretary Dirk Kempthorne on Oct. 2 requesting he withdraw the revisions to the recovery plan and "assemble a team of scientists to redraft a recovery plan based on best available science."

In addition, the scientists requested that the participation by Bush administration officials in the rejection of the recovery plan be reviewed. Kempthorne commissioned a review of Endangered Species Act decisions as part of reforms to improve how FWS handles these decisions. The need for the review was sparked by the improper influence of Julie A. MacDonald, a former deputy assistant at FWS, in how certain decisions were made. (See *The Watcher* article of May 15.) MacDonald was part of the Washington [DC] Oversight Committee that rejected the 2006 draft recovery plan.

According to NCCSP testimony before the House Committee on Natural Resources May 9, this Oversight Committee ordered the group to develop an alternative to their conservation-based plan, one that did not rely on a network of forest habitat reserves. The new alternative "was not based on sound science but was designed to give the Forest Service and the BLM the discretion to exempt public forests from the NWFP."

The Oversight Committee also ordered the group to change the scientific studies used as the basis of the recovery plan and to "de-link the recovery plan from the Northwest Forest Plan," according to the testimony.

The result of the process described above is BLM's Draft EIS. In addition to increasing logging in western Oregon generally, the plan would double the area of old-growth forests allowed to be logged, according to a summary of the draft written by NCCSP. It also eliminates the forest reserve approach to protecting habitat and designates logging as the primary value of BLM land, according to Oregon Heritage Forests (OHF), an association of conservation groups. The plan would also allow logging closer to rivers and streams, potentially affecting drinking water as well as sedimentation and water temperature, both of which affect native fish stocks. "Shockingly, the BLM claims minimal or no effect on fish, floods and sediment despite a massive increase in clearcut logging," OHF writes on its website.

The Draft EIS is open for public comment until December 10, 2007.

Report Finds Extensive Noncompliance with Clean Water Act Rules

A new report has found thousands of facilities are out of compliance with the requirements of the Clean Water Act. The report blames declining support for environmental enforcement during the Bush administration as a major cause of the regulatory violations. The U.S. Public Interest Research Group (U.S. PIRG), a nonprofit organization working on environmental policy and public outreach, published the report titled *Troubled Waters: An Analysis of 2005 Clean Water Act Compliance*.

According to the report, more than 3,600 facilities — or 57 percent of the national total — accounted for more than 24,400 violations of the Clean Water Act in 2005. The report also finds many of the violations to be "egregious." The report states, "Major facilities exceeding their Clean Water Act permits, on average, exceeded their permit limits by 263%, or nearly four times the allowed amount." PIRG also makes available on its website data on facilities by state.

The primary regulatory framework for enacting the Clean Water Act is the National Pollutant Discharge Elimination System (NPDES). Any facility, including an industrial, commercial and agricultural source seeking to discharge waste into U.S. waters must first obtain a permit. The permit system sets limits on the amount of waste that facilities can discharge and allows regulators to monitor pollution by requiring discharge reporting.

The U.S. Environmental Protection Agency (EPA) is responsible for administering the NPDES program but may also delegate responsibility to the states upon request. Currently, 45 states have EPA-approved NPDES programs, according to the report. However, EPA still bears some responsibility, the report says: "In general, once a state is authorized to administer a part of the NPDES program, EPA no longer conducts these activities. EPA still maintains an oversight role and retains the right to take enforcement action against violators if the state fails to do so."

The report chides the Bush administration for enacting policies that ease requirements for polluters and for failing to prioritize environmental enforcement. In 2003 and 2007, the Bush administration issued policies that undermine the ability of EPA to enforce the NPDES system, according to the report. One policy attempts to redefine "waterway" as it pertains to the Clean Water Act. "EPA has acknowledged that the 2003 policy alone could remove federal Clean Water Act protections from 20 million acres of wetlands, or about 20% of the wetlands in the lower 48 states," according to the report.

The report also blames declining budgets for EPA's growing inability to enforce Clean Water Act regulations. "From 1997 to 2006, EPA's total budget has declined 13 percent, when adjusted for inflation," the report says. The report also cites President Bush's requested cuts in the proposed FY 2008 budget to the Clean Water State Revolving Fund — a federal program that helps local governments improve water treatment and clean water practices —

as illustrative of the administration's declining support for clean water protections.

The report comes as EPA faces scrutiny for what critics deride as lax enforcement practices. A recent *Washington Post* investigation finds EPA is failing to pursue criminal prosecutions of some of the nation's worst polluters and repeat offenders. According to the article, "The number of environmental prosecutions plummeted from 919 in 2001 to 584 last year, a 36 percent decline."

The U.S. PIRG report also mentions a recent EPA Inspector General investigation, which found that even when EPA identifies polluters exceeding their NPDES permit limits, the agency is neither thorough nor timely in pursuing corrective action.

The report concludes with recommendations that U.S. PIRG believes would enhance facility compliance with the NPDES program. The recommendations include reversing the 2003 and 2007 policies, revoking the permits of repeat violators, easing requirements for citizen suits against polluters under the Clean Water Act, and expanding information reporting to enhance the public's right to know about the status of its waterways.

Senate Bill Grants Immunity to Telecom Companies, House Bill Stalled

The Senate Intelligence Committee recently passed a bill that would grant retroactive immunity to telecommunications companies involved in the National Security Agency's (NSA) warrantless wiretapping program. The same week, the House pulled a bill that would increase judicial oversight and accountability over the administration's surveillance efforts.

On Oct. 18, the Senate Intelligence Committee passed the FISA Amendments Act of 2007 by a vote of 13-2. The strong vote reflects an agreement reached between Democratic members of the Intelligence Committee and the administration. The bill would provide immunity for any telecommunications company if the attorney general certifies that the company was not involved in a particular lawsuit or that, in response to a request authorized by the president, the company assisted the government in counterterrorism operations between Sept. 11, 2001, and Jan. 17, 2007.

There are currently approximately 40 lawsuits involving telecommunications companies allegedly assisting the NSA's warrantless wiretapping program. All of these suits would potentially be thrown out if the Senate bill becomes law.

"While neither side got everything we wanted, at the end of the day, we believe we've accomplished what we set out to do — allow for necessary intelligence collection while maintaining critical privacy protections for Americans," stated Sen. Jay Rockefeller (D-WV), chairman of the Intelligence Committee.

An amendment introduced by Sens. Ron Wyden (D-OR) and Russ Feingold (D-WI) passed

in committee 9-6. It would require the government to receive a warrant in order to target an American citizen overseas. The White House stated it would not accept a bill which included such a requirement, and Republican members of the committee opposed it.

"Unfortunately, the Committee adopted a problematic amendment today, which if not modified, will make it more difficult to vote our bill out of the Senate," stated Sen. Kit Bond (R-MO), vice chairman of the Senate Intelligence Committee. "I am hopeful, however, that we will be able to reach a compromise on this issue when we get to the floor."

Wyden and Feingold were the only members on the committee who voted against the bill. "The bill, which I voted against, does nothing to protect the rights of innocent Americans communicating with people overseas and it includes unjustified retroactive immunity for those alleged to have cooperated with the Administration's illegal warrantless wiretapping program," stated Feingold. "As a member of the Senate Judiciary Committee, as well as Intelligence Committee, I will continue to fight for the rights of Americans and to protect the Constitution and the rule of law."

Feingold was referring to the fact that the FISA Amendments Act of 2007 next heads to the Senate Judiciary Committee, where Sens. Patrick Leahy (D-VT) and Arlen Specter (R-PA), chairman and ranking member of the committee, respectively, have expressed opposition to immunity for the telecommunications industry, without receiving records on the NSA spying program. A number of public interest groups have called on the committee to hold a public hearing on the bill.

Additionally, Sen. Christopher Dodd ☼ (D-CT) said that he would issue a hold on the bill. "I will do everything in my power to stop Congress from shielding this President's agenda of secrecy, deception, and blatant unlawfulness."

Meanwhile, in the House last week, the Responsible Electronic Surveillance that is Overseen, Reviewed, and Effective Act of 2007 (RESTORE Act) (H.R. 3773), previously described in the *Watcher*, was abruptly pulled by the leadership just before an expected floor vote due to a parliamentary maneuver by the Republicans.

The Republicans attempted to introduce an amendment that would have stated that the requirement to receive a court order does not apply if the target of surveillance is Osama bin Laden or related terrorist organizations. The Democratic leadership dismissed the maneuver as a tactic to impede the bill's progress, claiming that the bill already provides such authority. But House leadership started losing support, and the bill was pulled.

The RESTORE Act is expected to be considered the week of Oct. 22. Republicans are expected to attempt a similar maneuver and possibly try to include retroactive telecommunications immunity, which is not currently a part of the bill.

California Restores TRI Reporting for the State

When California Governor Arnold Schwarzenegger (R) signed the California Toxic Release Inventory Act of 2007 (Assembly Bill 833) into law on Oct. 13, California became the first state to pass legislation to undo the U.S. Environmental Protection Agency's (EPA) December 2006 weakening of the Toxics Release Inventory (TRI). The new state law establishes the threshold for detailed reporting at 500 pounds of a listed toxic chemical, which was the original threshold for the TRI program before EPA changed the regulations to reduce the reporting burden on companies.

Similar legislation was introduced and passed last year, only to be vetoed by Schwarzenegger. The signed version lacked certain components from the previous effort, such as provisions requiring the creation of a user-friendly website and analyzed data. However, Assembly member Ira Rushkin (D-21st), who authored the bill, was happy with the outcome. As quoted in the San Jose Mercury News , Rushkin said, "Hiding information from the people is reprehensible. I am very pleased that the governor agrees."

The federal regulatory policy changes, which went into effect in January, increased the threshold mandating detailed reporting of toxic pollution under the TRI program, from 500 pounds to 5,000 pounds, so long as less than 2,000 pounds were released directly into the environment. The change enables facilities to pollute much more before having to disclose specifics. Under the new threshold, facilities only need to report the chemical name and certify that the amount produced was under the threshold. The detailed report, which was formerly required, calls for disclosure of actual amounts of pollution and whether the chemical was released into the air, water or land.

California has long been ahead of the national curve in ensuring that its residents know about toxins in their environment.

- In 1986, the same year Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA) that established TRI, California voters passed Proposition 65, the Safe Drinking Water and Toxic Enforcement Act, which requires public notice if a toxic chemical is present in a product, in a workplace or is present in the environment.
- In 1990, the state enacted the "full" pesticide use reporting system, which created the most detailed database in the nation, possibly even in the world.
- Creating the most comprehensive statewide school requirement, the Healthy School Act of 2001 mandated all schools to record, track and provide notification of any toxic pesticide used within their grounds.

While several states have independently established a public toxic reporting system like TRI, most utilize the TRI program and its thresholds for the basic reporting structure, even if they have additional reporting requirements that go beyond the TRI program. As a result, these state programs, including California's, were automatically affected by the changes to the federal policy. New Jersey's Release and Pollution Prevention Report (RPPR) program

maybe the only state pollution reporting program designed such that the federal TRI changes did not create the loss of information faced by other states. New Jersey's RPPR already required detailed reporting similar to the federal TRI program but at a lower threshold. Despite the impact on state pollution programs, California remains the only state to pursue action against the federal policy changes, reclaiming the program standards at the state level.

There are federal efforts underway to restore the TRI program, as companion bills in the House (H.R. 1055) and Senate (S. 595) have both received hearings and await markup and votes.

CIA Investigates Its Own Watchdog, the Inspector General

In a disconcerting development, the Central Intelligence Agency (CIA) is investigating its own watchdog, the Inspector General of the CIA. Sens. Jay Rockefeller (D-WV) and Kit Bond (R-MO), chairman and vice chairman, respectively, of the Senate Intelligence Committee, Sen. Ron Wyden (D-OR), and other members of Congress expressed concern that such an investigation compromises the independence and integrity of the CIA's Office of the Inspector General (OIG).

On Oct. 12, the *New York Times* and *Los Angeles Times* reported that the OIG was being investigated by the CIA director, Gen. Michael Hayden. Hayden appointed a team to investigate the work of the Inspector General, John Helgerson.

Inspectors general offices function as supervisory bodies for agencies, investigating agency activities for possible mismanagement, waste, fraud or abuse. Oversight of inspectors general is an authority that belongs to Congress, not the very agencies being reviewed by the OIGs. The concern is that agency interference, in this case the CIA director's investigation, will impinge on the traditionally independent role of the OIG in providing objective review of the operations of the agency it monitors.

Wyden wrote a letter expressing his concerns to the Director of National Intelligence, Michael McConnell. "It is unacceptable for any agency head, deliberately or otherwise, to interfere in the independence of an Inspector General or his office," wrote Wyden. "Inspectors General often force government agencies and personnel to confront uncomfortable facts, but this is an essential part of their role and should be accepted by all agencies, including the CIA. People who know they are doing the right thing are not afraid of oversight."

The *New York Times* reported that the investigation comes at a time when the OIG is investigating the detention and rendition practices of the CIA. There is concern that such an investigation may be an attempt to temper the findings of the OIG.

This action of the CIA director ties into a larger pattern within the Bush administration of

curtailing the power and independence of inspectors general. Earlier this year, OMB Watch reported that the NASA Inspector General was the subject of investigations by Congress for allegedly creating a hostile work environment and developing inappropriately close relations with the chief counsel of NASA. OMB Watch also reported on the General Service Administration's (GSA) efforts to cut the funding of its Office of Inspector General, possibly in retaliation for the OIG's uncovering of nefarious practices at GSA.

Transparency in the Election Spotlight

Popular thinking tells us that for any trend, fad or heavily pursued activity, the pendulum will eventually swing back the other way. As we approach the 2008 elections, this may well be the case for government transparency, which, after years of increasing government secrecy, appears to be getting greater attention than ever before.

Elections often seem driven by the hottest or "sexiest" issues of the moment, too often involving more rhetoric and sensationalism than substantive issues of government policy. Most years, government transparency is considered far too dull an issue about the mundane day-to-day operations of government to attract much attention from candidates or voters. But as the presidential primaries approach, there are several indications that this year could include a much higher profile for government transparency as an issue.

The Reason Foundation has spearheaded an effort involving more that three dozen public interest groups to get presidential candidates to sign the Oath of Presidential Transparency. The oath commits signers to running the "most transparent Administration in American history," should they be elected, as well as fully implementing the Federal Funding Accountability and Transparency Act (FFATA) of 2006. Thus far, three candidates signed the pledge — Sens. Barack Obama (D-IL) and Sam Brownback (R-KS), and Rep. Ron Paul (R-TX), though Brownback recently announced that he is dropping out of the race. Obama — who co-sponsored the FFATA legislation, which requires a searchable database on government spending — stated, "Every American has the right to know how the government spends their tax dollars, but for too long that information has been largely hidden from public view."

In the 10Questions Presidential Forum, a new experiment in online democracy sponsored by MSNBC and bloggers in cooperation with the *New York Times*, transparency has become a top issue that site users want asked of presidential candidates. The site allows users to submit video questions for presidential candidates and then has visitors of the site vote on which questions are most important to them. A user-submitted question on transparency is currently among the top two questions receiving votes.

Interest in transparency also extends to Congress, as demonstrated by the Earmark Transparency Pledge. The pledge, organized by the Americans for Prosperity, commits signers to voluntarily disclose online a "regularly updated list of every earmark and/or targeted tax benefit that I request." The pledge effort is supported by the Sunlight

Foundation, Taxpayers for Common Sense and OMB Watch.

Participation and follow-through in such transparency efforts by members of Congress could play a larger roll during the next election as some voters pledge to cast their votes for members who vote to make Congress more transparent. Joshua Tauberer of GovTrack.us began a Transparency Vote campaign, in which participants agree to "pledge my vote to my senator & representative in 2008 if they vote for or sponsor a transparency initiative recommended by The Open House Project." The campaign has 273 pledges and seeks to reach 10,000 by January. The Open House Project, a collaborative effort by government information experts, congressional staff, nonprofit organizers and bloggers, has developed attainable reforms to promote transparency in the House of Representatives.

House Conservatives Sink SCHIP

Despite a considerable lobbying campaign by supporters, House Republicans blocked an effort to override President Bush's veto of a five-year, $35 billion funding increase for the State Children's Health Insurance Program (SCHIP) that would have provided an additional 4 million uninsured children with health insurance.

The final vote was 273-156, which fell 15 votes short of the necessary two-thirds majority. Only two Democrats voted to sustain the veto; the rest were Republicans.

In the two weeks leading up to the override vote, advocacy groups, health care providers, labor unions, and many other organizations launched an extensive grassroots lobbying campaign to pressure members of the House to vote to pass the bill. Americans United for Change, MoveOn.org, Service Employees International Union, American Federation of State, County, and Municipal Employees, and Families USA sponsored a multi-million dollar paid-media campaign involving television, radio and print ads across the country. Other organizations, including members of the Emergency Campaign for America's Priorities held hundreds of grassroots rallies across the country, and tens of thousands of citizens phoned or e-mailed their congressional representatives in support of the SCHIP bill.

Although the veto was sustained, there was improvement from the last time the bill was voted on earlier in October in the House. The previous vote on the same bill received a 265-159 vote. Had a two-thirds majority been achieved, the Senate would also likely have voted to override the veto, as it had previously approved the bill by the required two-thirds majority (69-30).

House Speaker Nancy Pelosi (D-CA) said the House is preparing a new version of the SCHIP reauthorization. She said the new bill will provide insurance for the same number of children (10 million) as the last version but will contain different eligibility restrictions to address concerns raised by House Republicans. Opponents of the bill primarily argued that

it offered insurance to families with incomes that were too high.

SCHIP is a health insurance program for children in families who make too much money to qualify for Medicaid but not enough money to afford private health insurance. The SCHIP bill the president vetoed would have provided insurance for mostly low-income children. According to the Urban Institute, about 70 percent of the families whose children would have received coverage had an annual income of approximately $40,000 or less.

The vetoed bill was a reauthorization of the SCHIP program, which expired on Sept. 30. The program's authorization was temporarily extended through Nov. 16 in the continuing resolution passed by Congress shortly before the fiscal year began on Oct. 1. According to *CongressDaily*, House leaders have said another continuing resolution may be necessary to keep the program going until Congress and the president can agree to a compromise five-year reauthorization. A temporary reauthorization will force Congress and the president to address SCHIP funding at least once more this session.

Your Voice is Still Needed!
Visit the OMB Watch Action Center to contact your representative to tell them to support the reauthorization of SCHIP!

AMT: Prospects for Reform and the PAYGO Challenge

In the coming weeks, Congress will come to grips with what is arguably the most important tax issue of the year, the Alternative Minimum Tax (AMT). In the very near future, House Ways and Means Committee Chair Charles Rangel (D-NY) will propose a "patch" to avoid a steep increase in the number of taxpayers liable under the AMT, as well as what he calls "the mother of all tax bills" — his long-awaited measure to repeal the AMT. In the Senate, the picture is more muddled amid rancorous debates in the Finance Committee, where AMT legislation presents the biggest challenge yet to the pay-as-you-go (PAYGO) principles adopted by Congress early this year.

When the 110th Congress opened in January, Rangel made clear that repealing the AMT was his top priority — he initially aimed to release his proposal in May but has yet to do so. Indeed, the almost universal sentiment in Congress is that the AMT should be indexed, overhauled or repealed at some point, as Rangel would like to do. But delays and lack of consensus on what an overhaul would consist of or how to offset the huge costs of repeal have stalled action.

The AMT was originally intended to ensure that the 155 wealthiest Americans — who had taken advantage of deductions and others means to avoid paying income tax entirely — paid their fair share in taxes. The AMT taxed only 20,000 taxpayers when it was adopted in 1969. The number of Americans paying it has skyrocketed in the years since. Because it is not indexed for inflation and its scope was enlarged considerably by the cuts in individual

income tax rates from 2001 to 2006, three million taxpayers a year now pay the AMT.

The Tax Policy Center estimates that the tax threatens to encompass an additional 19.9 million Americans in 2008, raising their taxes by an average of $3,264 annually. If the Bush tax cuts expire as scheduled at the end of 2010, 39 million taxpayers (roughly 35 percent) will be hit by the AMT in 2017. If the tax cuts are extended, the number jumps to 53 million taxpayers (close to 50 percent).

Efforts to keep that from happening and to limit the tax to the three million who paid it in 2006 via a one-year patch would cost an estimated $55 billion in lost revenue. Operating under restored PAYGO rules, which require new mandatory spending or tax cuts to be financed by offsetting spending cuts or tax increases, Congress is at pains to find a way to pay for this cost, much less the vastly greater cost of repealing the AMT entirely. Repeal of the AMT would cost roughly $840 billion over the next ten years in the unlikely event that the Bush tax cuts are allowed to expire; the cost is closer to $1.6 trillion if they are not. Neither of these options for AMT is cheap. On Oct. 17, according to *CongressDaily*, Senate Finance Committee Chair Max Baucus (D-MT) and other members of the panel discussed the idea of waiving the PAYGO rules for AMT, enraging deficit hawk Sen. Kent Conrad ☼ (D-ND), who called the discussion "unbelievably irresponsible."

Offsets sufficient to pay even for the relatively modest patch are not in great supply, and almost all of them can be tarred as a tax hike of some sort, complicating PAYGO compliance efforts. $66 billion in offsets already approved this year by the House Ways and Means and the Senate Finance committees for other bills are off the table. Still available and under discussion are closing the capital gains loophole on "carried interest" earned by private equity managers, limiting executive compensation deferral, taxing stock options based on book value, and toughening rules on tax shelters. Of these, only the carried interest option could come anywhere near paying for a one-year patch.

Action in Congress on the AMT issue has stalled this year over how, and whether, to achieve PAYGO compliance and the complexities of the Rangel bill. That bill, still not released to the public, is rumored to consist of a permanent, revenue-neutral repeal of the AMT, comprising an increase in the top ordinary individual tax rate, a corporate rate cut, elimination of major corporate deductions, and an expansion of the Earned Income Tax Credit, child tax credit, and other tax breaks for 90 million people. But during the week of Oct. 15, two important developments occurred which could break the stalemate.

First, Rangel conceded that time had run out this year for a vote on his broad tax reform package and that he would propose a one-year "patch" of the AMT. And Senate Finance Committee Ranking Member Charles Grassley (R-IA) refined his long-held view that "repeal of the AMT should not be offset because it is ... unfair to expect taxpayers to pay a tax they were never intended to pay, and it is even more unfair to expect them to continue paying for that tax once we get rid of it." He reportedly said he "would welcome a compromise that indexed the AMT threshold to protect the vast majority of taxpayers, while raising taxes on the wealthy to defray the budgetary impact," in compliance with PAYGO

requirements.

But the issue of whether the AMT bill will be offset is not settled. The Senate Finance Committee's heated discussion last week about offsets did not end in consensus. What's more, Baucus may have support from most committee members to waive PAYGO requirements for the $55 billion AMT patch in exchange for offsetting a similarly-sized two-year extension of popular tax credits that expire in 2007. The Committee is scheduled to meet again on Oct. 23. Congress is under pressure to act because the Internal Revenue Service begins printing tax forms in November and says it would need at least six weeks to reprogram its computers to account for any changes in law.

Labor-HHS Appropriations to Test Bush Veto Threats

Congress is nearly ready to send President Bush the first appropriations bill of the FY 2008 budget cycle — almost one full month overdue. The Senate is scheduled to vote today, Oct. 23, on the $150 billion Labor-HHS-Education appropriations bill. Once that version is conferenced with the House version (which passed in July 276-140), it will be sent to the president, where it may face a veto.

The Labor-HHS bill funds a wide array of human needs programs, from Head Start and the National Institutes of Health to the Occupational Safety and Health and Administration and college loan programs. In his budget, President Bush requested drastic cuts to many of these programs. For more details on those proposed cuts, see the Coalition on Human Needs' analysis.

President Bush has threatened to veto this appropriations bill and eight others, mostly over concerns they appropriate more funding than he requested. The president requested a total of $933 billion for FY 08 discretionary spending, while Congress proposed $956 billion. The $23 billion difference represents less than one percent of the $2.9 trillion total congressional proposal, and pales in comparison to the recent $196 billion supplemental funding request for the wars in Iraq and Afghanistan.

Of the multitude of amendments offered during debate on the bill, two unrelated budget process measures were offered. Sen. Wayne Allard (R-CO) offered an amendment to institute mandatory, automatic cuts to programs covered under the bill should they receive an "ineffective" rating by the Office of Management and Budget's Program Assessment Rating Tool (PART). This amendment was a dangerous proposal that would have transfered appropriating power to the executive branch and would have wreaked havoc with implementation of program services as budgets could be cut randomly throughout the year outside of the regular appropriations process. Fortunately, the amendment was soundly defeated 68-21.

In addition, Sen. John Cornyn ☼ (R-TX) attempted to offer his version of a perennially bad idea — sunset commissions — to the Labor-HHS spending bill. Sunset commissions were

particularly in vogue in 2006 as many conservatives in Congress attempted to institute policies that would have given the executive branch power to establish unelected commissions that could have created proposals to restructure or eliminate government programs and agencies and then fast-tracked those proposals through Congress. Cornyn's proposal was withdrawn when a point of order was raised against it, but he vowed to continue to raise the issue.

Democratic leaders in the House and Senate have announced they will send this bill to the president on the heels of a close veto override vote on a bill reauthorizing the State Children's Health Insurance Program. It is likely this bill will test whether the president will make good on his veto threat and how much support is present in Congress for diverging from Bush on appropriations bills generally.

The Labor-HHS appropriations bill will probably be the most difficult spending bill to pass this year. It is the second-largest appropriations bill, and the congressional versions have the biggest funding difference compared to the president's requests, with the Senate version being about $11 billion more. If Congress can pass this bill over the president's intended veto, it can probably pass other bills over the president's objections. This would pressure the president to negotiate with Congress over the remaining appropriations bills he has also threatened to veto.

Alternatively, a stalemate over Labor-HHS means no end in sight for the FY 08 budget fight. Congress could give in to the president's demands for budget cuts, or it may attempt to package popular appropriations bills with unpopular ones. Either way, smaller amounts of funding for social programs are more likely if the Labor-HHS appropriations bill is not enacted the first time around.

Like the children's health insurance debate, many of the funding proposals threatened with a presidential veto enjoy significant public support. A poll by the American Federation of State, County, and Municipal Employees and US Action found about two-thirds of Americans favor the congressional funding proposals for Head Start and cancer research included in the bill.

No Conviction, Mistrial for Holy Land Foundation

On Oct. 22, a federal jury in Texas deadlocked on all charges against the Holy Land Foundation (HLF) and most of the charges against five of its leaders. All were accused of supporting terrorism. The former board chair and endowment director, Mohammed el-Mezain, was acquitted of 31 of 32 charges against him, with the jury deadlocking on the remaining charge. The government has indicated that it will retry the case. It will face the same problems it faced in this trial: secret evidence that unraveled when subjected to scrutiny and the fact that none of the charities HLF was accused of funding are on government lists of terrorist organizations.

One juror later told the Associated Press that the jury was split on charges against the chief executive, Shukri Abu Baker and former chairman Ghassan Elashi, who were seen as the leaders, but most found little evidence against el-Mezain, former fundraiser Mufid Abdulqader or HLF's New Jersey representative, Abdulrahman Odeh. The juror, 33-year-old William Neal of Dallas, said the case "was strung together with macaroni noodles. There was so little evidence."

The unusual case had an unusual ending. The jury reported that it had reached a verdict on Thursday, Oct. 18, but Judge Joe A. Fish, who presided over the trial, was out of town. At a hearing the next day, a substitute judge sealed the verdict until Monday morning. When the forewoman read the verdict Monday morning, she said the Holy Land Foundation and Abdulqader were found not guilty on all counts, and el-Mezain and Odeh were acquitted on most counts.

But when Fish polled the jury, three members said they did not agree with those verdicts. As a result, the judge sent them back for further deliberations. After almost an hour, 11 of 12 jurors said they could not reach a unanimous decision, and Fish declared a mistrial on the deadlocked counts. The jury forewoman told the Associated Press, "When we voted, there was no issue in the vote. No one spoke up any different. I really don't understand where it is coming from."

The defendants were charged with money laundering, material support of terrorism and conspiracy. The jury had a complicated job, with the six defendants facing up to 36 counts each, requiring 197 separate decisions on guilt or innocence. The jury instructions and verdict form were so large Fish said, "It looks like the phone book for a small city." They deliberated for 19 days, what appears to be a Texas record.

The government case against HLF has changed since December 2001, when the group was designated as a supporter of terrorism, shut down and had its assets frozen. At that time, President Bush, accompanied by Attorney General John Ashcroft and Treasury Secretary Paul O'Neill, issued a statement that read, "Hamas has obtained much of the money that it pays for murder abroad right here in the United States, money originally raised by the Holy Land Foundation." However, by the time of the trial, prosecutors no longer claimed HLF provided support to Hamas or paid for violent acts. Instead, prosecutors admitted all the money went for charitable aid but said the local charities that delivered the aid to Palestinians were controlled by Hamas, which got a public relations benefit as a result.

If HLF had been convicted for working with local charities that are not listed as terrorist organizations, no U.S. charity could protect itself from prosecution by using government watch lists for guidance about who to work with. In addition, ensuring that all funds are spent only on aid would provide no legal protection. Legal expert David Cole of Georgetown University Law School told the *New York Times*, "It suggests the government is really pushing beyond where the law justifies them going."

Other reactions to the case include a statement from Muslim Advocates, the charitable arm

of the National Association of Muslim Lawyers, which said, "American Muslims also believe that our justice system works best when laws are applied fairly. The Justice Department's tactics in this trial, however, did not meet this standard. In an Aug. 15, 2007 letter to then-Attorney General Alberto Gonzales, Muslim Advocates and the National Association of Criminal Defense Lawyers objected to the Department's public release of a list of over 300 American Muslim individuals and organizations labeled as 'unindicted co-conspirators' but who had neither been charged with a crime nor legal recourse to challenge the allegation. This disclosure violated the Department's own policies, as well as principles of fair play and equal treatment. We are still awaiting a response to that letter. If the federal government decides to retry this case, Muslim Advocates urges the Justice Department and its prosecutors to abide by constitutional principles of fairness, due process, and equal treatment under the law."

Whistleblower Case Reveals Possible Political Campaign Intervention

Three former Oral Roberts University (ORU) professors filed a lawsuit on Oct. 2 in Tulsa, OK, against the university, alleging they were wrongfully fired after they reported the private school's involvement in a local political race. They claim that ORU President Richard Roberts directed former government professor Tim Brooker to use his students and resources to support the 2005 mayoral campaign of Tulsa County Commissioner Randi Miller. This use of university resources would violate the institution's tax-exempt status. Roberts has denied wrongdoing but was granted a leave of absence on Oct.17. The Internal Revenue Service (IRS) has notified ORU that it is conducting an investigation into the matter.

Former professors John Swails, Tim Brooker and Paulita Brooker's lawsuit outlines a series of events, beginning with Tim Brooker's claim that in December 2005, Roberts instructed him to support the campaign of Miller, a county commissioner running for mayor. According to the complaint, "Roberts instructed T Brooker that it was time to utilize the talent and resources of T Brooker and his students in political races. ... T Brooker resisted, explaining to Roberts the implicit improprieties and the clear boundaries required by state and federal law, including IRC section 501(c)(3); as well as the great danger of 'turning neighbors into enemies'." During a later meeting with Roberts, Brooker again warned against getting involved in the campaign. However, the suit claims that Roberts insisted, and eventually the school began to promote Miller by requiring students in a government class to work on the campaign. Brooker was told that his students "should be glad to work for Randi Miller for free."

In May 2006, the IRS notified the university about an investigation of its campaign activities. The *Tulsa World* reported that "a spokesman for ORU, confirmed that ORU was first contacted by the IRS in a letter May 3, 2006." The letter stated that the IRS was investigating "whether we participated in political programs inappropriately for a 501(c)(3)

organization." Roberts allegedly told Brooker to accept full responsibility for the political involvement and was told to cover up Roberts' instructions to become active in the campaign. The university provost signed an affidavit, which Brooker says he wrote and that the university intentionally changed in order to clear the president. As a cover-up, the university took certain steps to punish Brooker publicly. ORU refused to pay an $18,000 salary for teaching summer school, and according to the lawsuit, "[Brooker] endured retaliatory and punitive conduct, and was subject to public humiliation generated by Defendants on local and national levels."

The professors also said their dismissals came after they gave the board of regents a copy of a report documenting moral and ethical violations of Roberts and his family. This document, titled "Scandal Vulnerability Assessment," was filed in the court case on Oct.12. According to the lawsuit, a student working for the Miller campaign came across this damaging information written by Stephanie Cantese, Roberts' sister-in-law. "This compendium itemized numerous and substantial acts of misconduct and improprieties by the Defendants, ORU, and Roberts." The material was handed over to Brooker, and he passed it on to his supervisor Swails, another plaintiff in the case. Afterward, Brooker, Swails and Paulita Brooker were fired.

Jack Siegel of the blog Charity Governance "would not be surprised if IRS auditors descend like biblical locusts on ORU and its books and records. This case raises all the classic issues that come with the intermediate sanctions — allegations of lavish travel, personal use of exempt organization assets, large expenditures on clothing, and unreimbursed home decorating expenses."

Nonprofits Briefed on Myths and Facts of the Financial War on Terror

Nonprofits concerned with the impact of counterterrorism programs on charities were briefed on the larger context of the "financial war on terror" by Professor Ibrahim Warde, author of the new book *The Price of Fear*, at an Oct. 19 luncheon in Washington, DC. Warde argued that the series of financial crackdowns initiated by the U.S. government since the attacks of Sept. 11, 2001, have had virtually no impact on terrorism because they are based on a fundamental misconception of how terrorism works. He proposed reforms that would avoid collateral damage, including the negative impact on charitable programs.

Warde opened his presentation with a history of how U.S. financial sanctions programs were expanded by President Bush after 9/11 to first target Al Qaeda, then Hamas and Hezbollah, followed by remittance networks (hawalas) and mainstream Islamic charities in the U.S. These sanctions were often used indiscriminately, causing collateral damage with "political, social and economic consequences that have nothing to do with terrorism, but which may endanger American's national interests and the security of the world in the long term."

As an example, Warde cited the November 2001 closure of Al-Barakaat, an international remittance and telecommunications company, which was accused of sending $15-25 million a year to Al Qaeda. The closure was announced with great fanfare by President Bush, but the accusations were later disproved, and the company was exonerated. Warde also said closure of charities has been counterproductive, as it has been perceived as attacking Islam or picking on the poor and defenseless; Warde said this kind of collateral damage only increases terrorist support networks.

Addressing the role of money in spreading terrorism, Warde said U.S. policy is driven by the false assumption that "money is the lifeblood of terror." He said, "If money is the oxygen of terror, and if the financial war on terror is such a success, how could we explain that since 9/11, international terrorist attacks have increased substantially (+56% in 2003, +300% in 2004, +400% in 2005, +40% in 2006), and that the main targets of the financial war (Al-Qaeda, Hamas and Hezbollah) have proven so resilient?"

Warde said the actual cost of carrying out terrorist attacks is low, citing Scotland Yard estimates that the 2005 London subway bombings cost less than $1,000. The assumption that there is a finite stash of terrorist money is unfounded, he said, noting the myth that Osama bin Laden has $300 million has been proven to be false (bin Laden had been disinherited by his family and his assets in Sudan were seized by the government prior to 9/11). Instead, "money will appear whenever there is support for terror," making the battle for hearts and minds the right priority.

The political aspects of the economic sanctions system are also criticized by Warde, who says sanctions appear to be a costless way of impacting other governments without military intervention, but their use has escalated to the point of diminishing returns. Often, action is the result of frustration. However, the collateral damage is rarely considered, where average people suffer but rulers are strengthened. The bureaucratic factor is another overlooked aspect of the financial war on terror. Use of the flawed "crime for profit" template in the ideologically-driven terrorist context has built anti-money laundering bureaucracies and led to cultural and linguistic dysfunctions when strategies applied to Latin American drug lords are applied to Islamic terrorists. Instead, Warde said the sanctions system should differentiate between money laundering (dirty money being "cleaned") and money soiling (clean money given to terrorists).

Warde told the group reforms are possible if false assumptions can be addressed and there is a better understanding of different financial cultures. He proposed more emphasis on winning hearts and minds and better integration of terrorist financing policies with overall foreign policy goals. Quoting the 9/11 Commission report, Warde said, "There was almost no intersection between those who understood financial issues and those who understood terrorism."

1742 Connecticut Avenue, N.W., Washington, D.C. 20009
202-234-8494 (phone)
202-234-8584 (fax)

Combined Federal Campaign #10201