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Opposition to Dudley as Regulatory Czar Mounts

A Senate committee recently announced a hearing for Nov. 13 to consider the nomination of Susan Dudley to be the head of the White House's regulatory office. The Dudley nomination has created a firestorm of protest from organizations representing workers, environmental issues, consumer protections, and other public interest concerns.

The Senate Committee on Homeland Security and Governmental Affairs has scheduled a hearing on the Dudley nomination to the post of administrator of the Office of Information and Regulatory Affairs (OIRA) within the White House's Office of Management and Budget for 2:30 pm on the first day of the lame-duck congressional session. Only one witness is scheduled to testify: Dudley.

OIRA was created through the Paperwork Reduction Act of 1980 and has been a vehicle for

pushing through the policies and priorities of presidents since Ronald Reagan. OIRA often operates outside of public scrutiny, yet has enormous sway over agency actions. All information collection efforts that affect 10 or more people (e.g., surveys, reporting requirements) must be approved by OIRA. All major regulations must also go through OIRA screening.

Many corporate and conservative interests look on OIRA as an advocate in reducing government regulation. Many in the public interest community view OIRA as a significant barrier in pursuing public protections. OIRA not only oversees agency regulatory transactions, it sets the policies by which agencies do assessments of whether to create regulations.

The last OIRA administrator, John Graham, who left earlier this year bound for academia, was accused of tilting the scales decidedly in favor of industry. Graham's history regarding regulation also made his nomination highly controversial, and Graham received the second most "no" votes (37) after John Ashcroft for any nomination in Bush's first term.

Sen. Susan Collins (R-ME), the chair of the Homeland Security and Governmental Affairs Committee, has not scheduled a mark-up to report out the Dudley nomination, though the chair could quickly call for such a mark-up. [ED note: an earlier version of this article indicated that there were rumors Collins might have a mark-up by the end of the week of the hearing. On Oct. 26, Collins' office confirmed that they have not scheduled a mark-up.] In the past, Collins has often sought to report out nominees with unanimous consent, a tactic that might prove difficult with such widespread opposition to Dudley's nomination.

On Oct. 23, 12 leading national environmental groups sent a joint letter to the oversight committee urging the committee "to oppose Susan Dudley's nomination." The groups also called on the committee "to ask President Bush to withdraw her nomination, unless her views can receive a full airing." The environmental groups describe Dudley as "far outside the mainstream."

This sentiment was echoed in a sign-on letter developed by Public Citizen and circulated by OMB Watch. In less than 24 hours, the sign-on letter received more than 100 organizational signatories. Additionally, an alert by OMB Watch generated roughly 2,000 emails to the Senate in as much time opposing the Dudley nomination. All of which indicates just how considerable is opposition to Dudley's nomination within the public interest community.

Dudley appears far more ideologically driven than Graham. So if Graham's nomination received 37 votes during a period of popularity for Bush, many wonder what will be in store for the Dudley nomination with Bush's popularity waning.

This would not be the first time Dudley was under the employ of OIRA, and recently, as the head of the industry-backed Mercatus Center, she has written extensively about regulatory issues. These writings, considered extreme even by some of her conservative colleagues, led Public Citizen and OMB Watch to recently conclude that Dudley is unfit to serve.

Dudley's anti-regulatory leanings have led her to advocate against stronger health standards regarding arsenic in our drinking water; against government requirements for air bags in automobiles, and against the very existence of OSHA regulations. She has written, "There is no economic justification for a federal role in defining construction practices and determining wages, as required by the Davis-Bacon Act." She has even argued that ozone, the key component of smog, is good for you since it protects against skin cancer. For more on Dudley's views, visit <http://www.ombwatch.org/regs/dudley>.

Recently six former OIRA administrators sent a [letter](#) to the oversight committee describing Dudley as a person of "integrity, experience, and relevant training." But even that letter did not endorse her. Instead, the six past OIRA administrators say the "nomination merits careful scrutiny and deliberation" and they urge "prompt and fair-minded Senate review" of Dudley's nomination. This was similar to a letter they sent regarding John Graham's nomination.

To email the Senate and ask that lawmakers vote 'no' to the Dudley nomination, click [here](#).

Ballot Initiatives Threaten Regulatory Protections

November ballot initiatives in six states would force state governments to provide compensation for lost property value as a result of regulation or be forced to waive the regulatory protection.

The "regulatory takings" ballot initiative uses fear of eminent domain, spurred by the 2005 Supreme Court case *Kelo v. New London, Conn.*, to push forward a sweeping anti-regulatory initiative. If the initiative wins voter support, it could have an enormous chilling effect on state and local governments' ability to pass and uphold needed health, safety and environmental protections.

In the Supreme Court decision, *Kelo v. New London, Conn.*, the court upheld the right of the city government to seize property in order to redevelop. The ruling created a backlash at the state levels, and approximately 30 states passed laws limiting eminent domain. Right-wing, anti-government groups have used the property rights movement galvanized by the court decision to piggyback their anti-regulatory agenda.

Now, Washington, Arizona, California, Idaho, Montana, and Nevada are set to vote on regulatory takings ballot initiatives. Arizona, California, Idaho, Montana and Nevada will vote on a ballot initiative that includes both restrictions to eminent domain and regulatory takings restrictions. The measure in Washington is solely to limit regulatory takings.

Called "Kelo-plus" by supporters, the measure would require states to compensate landowners for lost property value as a result of a law or regulation limiting land use, including any environmental, health or safety regulations that limited what an individual could do on private property. If the government could not pay, then most of the ballot initiatives require the

regulation to be waived or amended.

A similar ballot initiative passed in Oregon in 2004, and already the measure has had far-reaching implications. Some 2,200 claims have been filed in the state totaling over \$5 billion. About half of the cases have been resolved. Without the money to pay out claims, the state has been forced to waive the regulations in all cases. Under the auspices of upholding property rights, the law, known as Measure 37, has essentially provided a backdoor to deregulation.

The misleading connection drawn between property takings and regulatory takings in the ballot initiatives is no accident. In fact, this strategy was [articulated](#) by the libertarian magazine *Reason* in April of this year. All six of the ballot initiatives are funded by Howard Rich, head of Americans for Limited Government. Rich is also backing another radical ballot initiative, the Tax Payer's Bill of Rights (TABOR), which would put draconian limits on state spending. According to the Ballot Initiative Strategy Center, ALG has spent upwards of \$11 million to push through the TABOR and regulatory takings measures.

Bill Requires Release of Sensitive Security Information

In a positive development for open government, earlier this month President Bush signed into law the 2007 Homeland Security Appropriations Act which included provisions that mandate that all documents categorized as "sensitive security information" (SSI) be released after three years. Only a determination by the Secretary of the Department of Homeland Security (DHS) that there is a "rational reason" to continue to withhold the information can postpone the release.

SSI is a category of sensitive but unclassified information (SBU) - information which is unclassified but restricted from public access - that is used by the Transportation Security Administration (TSA), an agency within the DHS. In June of 2005, the [Government Accountability Office \(GAO\)](#) concluded that TSA did not have the guidance or procedures for establishing what constituted SSI, who could designate information SSI, or when SSI would be reviewed. Nor did TSA have procedures for tracking SSI information and could offer no estimate of the number of documents classified as SSI or the number of people with the authority to designate information as SSI.

[Section 525](#) of the 2007 Homeland Security Appropriations Act is an effort to address these problems. It requires the DHS Secretary to draft SSI policies that require "the release of certain SSI information that is three years old unless the Secretary makes a written determination that identifies a rational reason why the information must remain SSI." Section 525 also requires SSI be made available in civil court cases if the judge determines it is needed, if the release of the information would not pose a security risk, and if the requesting party cannot access it elsewhere without "undue hardship."

The section requires the DHS secretary to report to the Appropriations Committees within 120 days on the department's progress in implementing the new SSI policy, and GAO is also requested to assess the department's progress after one year. While the appropriations provisions only apply to SSI, successful implementation may trigger the use of time limitations on other categories of SBU information.

FedSpending Spotlight: Skyrocketing Contracts, Less Competition

Lurita Doan, the new head of the General Services Administration (GSA), recently complained about the growth of Government-wide Acquisition Contracts (GWACs) and the loss of contracting efficiency. Data from FedSpending.org reinforces these efficiency concerns by revealing the fast growth in federal contracts and, specifically, the remarkable growth of contracts for which there was little to no competition.

Given that hundreds of billions of taxpayer dollars are spent each year on federal contracts, maximizing efficiency should be a primary concern among federal agencies. Unfortunately, it appears this is often not the case. According to Doan, companies spend millions to get GWACs with agencies and then pass the costs onto government. GWACs are contracts established by individual agencies that give companies the potential to supply any agency with products and services. Companies listed on GWACs are supposed to be the most competent and reliable providers but not necessarily the cheapest. Even after narrowing the list of approved companies, competition among companies for individual task-order awards is supposed to exist.

However, too frequently only company bids on task orders under GWACs are taken into consideration. GSA wants to eliminate unnecessary GWACs and consolidate purchasing of technology and services under the GSA so the government can maximize competition and volume discounts. GSA believes that limited competition and reduced mass-purchasing power means that the government and American taxpayers are not getting the best price.

Research conducted through [FedSpending](http://FedSpending.org), OMB Watch's new website that tracks more than \$12 trillion in federal spending over the last six years, demonstrates the validity of Doan's concerns. The data reveals that from FY 2000 to FY 2005 the amount spent by the federal government on contracts has grown an astonishing 83 percent, rising from \$208.8 billion to \$381.9 billion.

In addition, the data indicates that a major portion of this growth is driven by contracts in which agencies permit limited or no competition for the contract. The amount of money spent on federal contracts awarded with no competition was \$48.7 billion in FY 2000 and grew to \$97.1 billion in FY 2005, an increase of 99.4 percent. Moreover, during the same time, the federal government went from spending \$17.8 billion on contracts with only one bid to spending \$40.1 billion, an increase of 125.3 percent over six years.

Competition is a fundamental tool to drive down prices, avoid wasteful spending and ensure that tax dollars are spent fairly and wisely. However, data indicates that federal agencies are abandoning this contracting principle. Previously, the lack of access to usable data made evaluating the level of competition in federal contracting extremely difficult, if not impossible, to perform. FedSpending is a new window into the world of federal government expenditures that enables citizens, journalists, and researchers to hold government more accountable for how it spends national resources.

While raising serious concerns about the lack of competition to keep federal contract costs under control, the data does not provide us with a clear picture of why this is the case. Perhaps the shift away from competition is an effort to achieve greater speed or is a by-product of fewer procurement staff available to oversee contract competitions. Whatever the reason, with hundreds of billions of tax dollars on the line, these streamlined agency contract decisions and their results deserve greater scrutiny from Congress, the media and the public.

Attorney General Gives Thumbs Up to Agencies on FOIA Plans

Attorney General Alberto Gonzales issued a [report](#) last week to President Bush on the implementation of Executive Order 13392, which required agencies to establish Chief Freedom of Information Act (FOIA) Officers and develop FOIA improvement plans to reduce backlogs and increase public access to highly sought-after government information. The report showers praise on agency improvement plans, in sharp contrast to an OpenTheGovernment.org review that found agencies failed to address important FOIA improvement areas.

Claiming E.O. 13392 "should prove to be the most significant development in [FOIA's] history," the report finds that agencies have implemented the executive order "in a vigorous manner fully commensurate with the importance of this unprecedented Presidential initiative. Overall, they have followed the extensive implementation guidance that has been provided to them and where necessary have demonstrated a strong commitment to promptly making adjustments to their initial planning efforts as required."

The attorney general identifies "significant areas of FOIA administration improvement have been firmly embraced by the agencies." The report states that agency plans demonstrate a commitment to, among other things, implement technologies to improve FOIA processing; proactively disclose information; treat requesters courteously and professionally; improve tracking of FOIA requests; and decrease backlogs of FOIA requests.

This positive overview of agency FOIA improvement plans sharply contrasts with a [July 4 report](#) issued by OpenTheGovernment.org. The report found after reviewing a number of FOIA improvement plans that "many of the improvement areas were either not addressed or rated as poorly addressed." The Securities and Exchange Commission and the Office of Management and

Budget plans received the worst ratings, failing to address 24 and 22 of the 27 identified improvement areas, respectively. Generally, agencies produced plans that focused on a narrow set of problems and only explored short-term solutions with little effort spent considering larger issues or longer-term improvements.

The Government Accountability Office (GAO) issued its own [report on FOIA](#) earlier in the year finding that, "Despite processing more requests, agencies have not kept up with the increase in requests being made." Increasing backlogs of unprocessed requests are cited as a major problem by GAO, which found "the number of pending requests carried over from year to year has been steadily increasing, rising to about 200,000 in fiscal year 2005--43 percent more than in 2002."

The Department of Justice recognized that the subject of timeliness of FOIA responses and backlog reductions was inadequately addressed by some agencies and requested that agencies revise their improvement plans accordingly. The Department of Education, Federal Energy Regulatory Commission, National Aeronautics and Space Administration, National Archives and Records Administration, and Securities and Exchange Commission have completed the suggested revisions. Fourteen additional agencies have committed to revising their improvement plans.

Surprisingly, the Office of Management and Budget's improvement plan, which OpenTheGovernment.org found to be the second worst of all federal agencies subject to FOIA, was not asked to be revised. The Attorney General also did not address other pressing FOIA improvements, such as requiring responses to FOIA requests be made available on agency websites.

With the failure of E.O. 13392 to adequately address various shortcomings in FOIA procedures, legislative proposals have been introduced to strengthen FOIA and improve public access to government information. Last September, the Senate Judiciary Committee approved the [Openness Promotes Effectiveness in Our National \(OPEN\) Government Act of 2005 \(S. 394\)](#). The bill, sponsored by Sens. John Cornyn (R-TX) and Patrick Leahy (D-VT), would, among other things, 1) allow the public to recoup legal costs from the federal government for improperly withheld documents; 2) establish a tracking system for requests; and 3) create a system to mediate disputes between those requesting information and federal agencies.

In March 2005, Cornyn and Leahy introduced a second bill, the [Faster FOIA Act of 2005](#), to establish a commission to study backlog problems and possible improvements of agency procedures. Similar bills, the OPEN Government Act (H.R. 867) and Faster FOIA Act (H.R. 1620), have been offered in the House by Reps. Brad Sherman (D-CA) and Lamar Smith (R-TX).

Treasury Reports Quarter-Trillion Dollar Deficit; President Still Obscures Fiscal Problems

When the Treasury Department closed the books on Fiscal year 2006 on Sept. 30, one number precipitated a furious round of back-slaps and high-fives in the halls of the White House and the Office of Management and Budget - \$248 billion. President Bush had no compunction about expressing glee about the nearly quarter-trillion dollar federal budget deficit for FY2006. Unacknowledged by the president, of course, was the simple fact, as pointed out by the Government Accountability Office, that "[today's fiscal policy remains unsustainable](#)." And in ignoring the reality of forecasts from all economic quarters, Mr. Bush continues to misconstrue the state of the economy and the fiscal health of the nation.

Earlier this month, [Bush gave his own unique characterization](#) of the state of the deficit:

In 2004, I made a promise to the American people, we would cut the federal budget deficit in half over five years. Today I'm pleased to report that we have achieved this goal, and we've done it three years ahead of schedule. (Applause.)...These budget numbers are not just estimates; these are the actual results for the fiscal year that ended February the 30th. [sic] These numbers show that the budget deficit has been reduced to \$248 billion and is down to just 1.9 percent of the economy...these budget numbers are proof that pro-growth economic policies work.

The president failed to mention several key facts about current budget deficits that would have greatly changed the outlook. Firstly, the repeated mantra of "in half by 2009" leaves the impression that the reduction of the budget deficit by half is a benchmark on the way to eliminating budget deficits. This is a false impression. The president's FY2007 budget and [recent Congressional Budget Office \(CBO\) estimates](#) both project growing deficits after 2009. Secondly, the deficit number that Mr. Bush claims to have cut in half never materialized. This fact is absent in his pronouncements but starkly presented in [OMB's Mid-Session Review](#):

...the President is on track to meet his goal of cutting the deficit in half by 2008, a year ahead of schedule, from its projected 2004 peak of 4.5 percent of GDP, or \$521 billion.

The actual deficit for Fiscal year 2004 was significantly lower than the \$521 billion the president has used as his benchmark. Using real figures, the deficit has actually been reduced by 40 percent, not "half" as the president promised.

Trotting out an incomplete or outright imaginary set of budget numbers in support of his fiscal policies is not a new game for this president. President Bush and OMB have taken to the extreme the [practice of inflating budget forecasts](#) for the purpose of claiming budgetary victory when the actual deficit numbers turn out to be smaller. In 2005, the president's budget projected a \$426 billion deficit; it turned out to be \$318. Those numbers in 2006 were, respectively, \$432 billion and \$248 billion.

The year-end budget figures are, of course, a favorite horse for the president to beat on the

campaign stump. On [Oct. 12](#), for instance, he told reporters:

As a result of good fiscal policy in Washington, D.C., this economy is strong. And the best way to keep it there is to make the tax cuts we passed permanent. (Applause.)...You might remember the debate about the deficit -- [Democrats] go around the country saying, well, we got to solve the deficit and we need to raise taxes...It's amazing what happens when you cut taxes; the economy grows, you end up with more tax revenues.

Again, the president comments are intentionally vague and exceedingly misleading. [Numerous sources and analyses](#) have concluded that any economic growth that results from tax cuts cover only a small fraction of their costs. [The CBO](#), [the Treasury Department](#), [a former chair of the president's Council of Economic Advisors](#), and the [president's own budget](#) all conclude, without exception, that tax cuts do not spur enough economic growth to pay for even a fraction of their cost. Those Democrats to whom Mr. Bush refers are certainly not alone in their assessment that tax cuts result in huge deficits over the long haul.

The president conceals the fact that the surge in federal revenues this year didn't result from a sudden fattening of the pocketbooks of working Americans. Wages for working Americans have stagnated in the current recovery. The [latest Census figures](#) show that household income rose 1.1 percent from 2004 to 2005. In fact, this paltry increase, which was not large enough to cover the erosive affects of inflation, was the first time that real household income has risen at all since 1999. The CBO has indicated the "revenue surprise" this year that was partly responsible for the smaller deficit was mostly the result of an increase in corporate income tax payments. If President Bush's fiscal policies are meant to grow the economy, they are certainly not designed to ensure that working Americans share in the nation's prosperity.

Economic growth (and contraction) is the result of countless factors that are mostly beyond the reach of federal fiscal policy. However, Bush insists on pointing to a growing economy following massive tax cuts as "proof that pro-growth economic policies work." If the president believes that his tax cuts are fueling the recent recovery, then he must also believe that his predecessor's tax increases are, in fact, a superior method of spurring economic growth. After President Clinton raised taxes in 1993, the economy continued to grow unabated for six and a half years at the brisk pace of 3.9 percent per year on average - far greater than growth under Bush.. Clinton's fiscal policies, unlike those of his successor, resulted in a budget surplus - a surplus which Bush promptly traded in for massive tax cuts mainly benefiting the wealthy and a return to deficits - this time record-setting.

But the president is not the only actor who refuses to seriously confront the fiscal state of the nation. A dysfunctional Congress yet again failed to execute its most basic duty and pass the necessary spending bills to keep the government running for Fiscal year 2007, which began on Oct. 1. Congress's unwillingness to come to terms with the federal budget has been abetted by a lack of leadership from the White House. Unless the president changes his head-in-the-sand

attitude toward the impending financial strains of a retiring Baby Boom generation and spiraling Medicare costs, he will continue to constrain the options available to policymakers for years to come. Bush's lack of concern betrays his desire to break a decades-long covenant between the federal government and working Americans to provide a minimum of security to the elderly.

In addition to cutting off possible solutions to meeting impending obligations, the president, through deficit financing, has imposed an increased tax burden for generations to come. Deficit spending financed by loans is pushing the cost of current policies onto future generations. As [recent analyses by Citizens for Tax Justice](#) conclude, the increase debt burdens more than negate the tiny sums of money 99 percent of Americans received from the Bush tax cuts. Future generations will be forced to bear the burden of Bush's refusal to face the hard facts of prevailing, main-stream economic theory (and for that matter, of simple arithmetic).

The start of the new fiscal year on Oct. 1 was greeted by a growing economy that is leaving behind most working Americans; a federal budget deficit that, by the admission of the president's own budget, is about to start ratcheting up again; a national debt on which annual interest payments (at \$226 billion) are *25 percent* of discretionary spending and nearly as large as the federal budget deficit itself.

All of these factors are restricting the policy options available to lawmakers to deal with ballooning Medicare costs and possible long-term Social Security imbalances. Instead of exhibiting the leadership necessary to right the listing ship, Bush (and many in Congress) would prefer to tell fairytales about magical tax cuts and employ rhetorical sleights-of-hand to obscure unsuccessful and unsustainable fiscal policies.

A Fiscal Policy Review of the 109th Congress

With just a few short post-election, lame-duck weeks left, the 109th Congress will leave behind a legacy of woefully inadequate action on fiscal policy. With a set of fiscal challenges that included the need for comprehensive tax reform, concerns over Social Security insolvency, large and growing deficits, the 109th Congress' list of accomplishments is almost non-existent.

After Congress failed to enact a sinister overhaul of Social Security in 2005 and comprehensive tax reform disappeared from the national agenda in early 2006, it seemed plenty of time remained on the agenda for Congress to complete its fundamental annual budget work. Unfortunately, 2006 would be particularly bad year for Congress' fiscal policy work.

Among the many failures:

- No budget resolution agreement early in the year, setting the stage for additional fiscal breakdowns later on
- Enactment of only two of the 12 spending bills Congress needed to pass in order to fund

the government during FY 2007, which began Oct. 1

- Failure to enact a slew of important legislation, from lobbying and budget process reform, to closure of wasteful tax loopholes that encourage overseas outsourcing and the Alternative Minimum Tax (ATM) patch
- No action to address the long-term solvency of Social Security and Medicare

In addition, with House and Senate leaders [obsessed with an estate tax rollback](#), other popular priorities like a minimum wage increase and the extension of the dozen-plus expiring tax credits, ranging from those for corporate R&D to tuition tax credits, continued to languish.

It is little wonder that, according to an Oct. 19 [Wall Street Journal/NBC poll](#), 16 percent of Americans approve of the job the 109th Congress has done. To put that in perspective, that's less than half of the Americans who currently approve of the job the president has done. It is the worst rating for Congress *ever* recorded.

"When we say this is the most do-nothing Congress in the history of our country, this isn't just flippant ... This is true", Senate Minority Leader Harry Reid (D-NV) told [The New York Times](#) last month.

It's not just the opposition in Congress that is leveling the "do-nothing" label. Recently, the "Dean" of political reporters, the *Washington Post's* David Broder, gave Congress what could modestly be described as [bad marks](#). Broder [reported](#) that 11 prominent nonpartisan economists - "people who, by virtue of their work and long careers outside of politics, have earned reputations for delivering unvarnished analysis of economic policy" were asked to grade the economic performance of the Republican Congress. The class average: C-.

In addition, a bipartisan pair of respected long-time congressional observers, Thomas Mann (senior fellow at the Brookings Institution) and Norman Ornstein (resident scholar at the American Enterprise Institute), [reviewed the record](#) of the 109th and concluded, "After 37 years in Washington... we are pretty well inured to shenanigans [but] the output of the 109th is pathetic measured against its predecessors."

While some observers would argue a Congress that governs least governs best, there are significant consequences to Congress' inaction on fiscal matters. Problems that went unaddressed, such as finding a permanent solution to the creep of the AMT or the rapidly accelerating interest payments on the national debt, will only get worse - and more expensive - the longer Congress waits.

In addition, because political leaders have [exaggerated good short-term news](#) on budget deficits, the long-term structural problems remain with no solution in sight, and the retirement of the Baby Boomers is one year closer.

It would be unfair to suggest that Congress actually did *nothing* of significance on fiscal policy. It

passed and the president signed a [\\$781 billion extension of the debt limit](#). It was the fourth time Congress has raised the nation's credit limit since 2003, accounting for an additional \$3 trillion of debt - or a loan equivalent to \$30,000 from every American family.

Not resting at simply failing to fix the country's fiscal problems, Congress actually made them worse. The Center on Budget and Policy Priorities [recently concluded](#) that the 109th Congress "took our already large projected budget deficits and passed legislation that will make them larger. The legislation increased projected deficits from 2005 (the year the [109th began]) through 2011 (when the current five-year budget window ends) by a total of \$452 billion." Also making matters worse - despite continued statements from Congress decrying the complexity of the tax code - legislation passed since 2001 has "added more than 100 tax breaks to an already unwieldy tax system," according to the nonpartisan [Urban-Brookings Tax Policy Center](#).

Congress' only other notable fiscal accomplishment is also probably not one they are bragging about in campaign speeches. Before leaving Washington to try and convince the American electorate to send them back to Congress, the House and Senate passed a continuing resolution (CR) that continues to fund the government in the absence of completed appropriations bills. This CR [contains a nasty hitch](#) that sets funding at the lower of three levels: the House-only, Senate-only passed appropriations bills, or the previous year's funding level. The Labor-HHS-Education appropriations bill (H.R. 5647) did not pass either chamber, leaving funding for the vast array of domestic programs under the bill at the fiscal 2006 level - an effective cut after inflation.

The CR remains in effect only until Nov. 17, and Congress will return to a lame-duck session after the elections on Nov. 13. How much time Congress will spend in session during the lame duck is unknown. Among the various loose ends that lawmakers will likely attempt to tie up are the remaining appropriations bills and the expiring tax extensions, collectively known as the "extenders." Passage of the "extenders" package is long overdue, with popular support for the legislation from both Democrats and Republicans. While these are the only items Congress will likely have time for, they could also attempt to pass a much needed increase in the minimum wage.

The election outcome may still dictate strategy for the majority, but regardless of what they are able to pass in November, the fiscal policy accomplishments of the 109th Congress can already be judged a failure.

Citizens for Tax Justice Give Congress, President Failing Marks on Tax Policy

The last six years of fiscal policy under the Bush Administration have been a bad deal for 99 percent of Americans, according to two reports released last week by Citizens for Tax Justice

(CTJ).

The first of the reports, [*The Bush Tax Cuts: Is Your State Better Off?*](#), examines who in each state has benefited from Bush's tax policy. To more accurately represent the long-term effects of the tax cuts, the report not only shows the size of the tax breaks received by each income group, but also the disproportionate share of the increased national debt that each group must pay off.

Each time Congress passed tax cuts over the last six years, it "paid for" these cuts by borrowing money - adding enormously to the national debt. To take that into account, CTJ makes the assumption that the additional debt added over the last 6 years will have to be paid back in the future through spending cuts and tax hikes on a broad range of taxpayers. From this vantage point, very few taxpayers came out ahead in the tax cuts. Generally, only the wealthiest 1 percent benefited at all.

Ohio, for example, is still struggling to recover from the 2001 recession. Yet nearly all Ohioans except a wealthy few have received no net benefit from the tax cuts after increased national debt burdens are factored in. Moreover, the wealthiest 1 percent of taxpayers there got to keep 27 percent of the total amount of money released by the tax cut - far more than the *entire* bottom 60 percent, according to the CTJ report.

**Effects of Tax Cuts on Ohio Families and Individuals in 2001-2010:
Share of Tax Cuts by Income Group**

Income group	Ave. 2006 Income	% of Total Bush Tax Cuts in Ohio										10 yrs
		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	
Lowest 20%	\$ 10,500	2.9%	1.9%	1.2%	1.2%	1.2%	1.2%	1.6%	1.6%	1.7%	1.5%	1.5%
Second 20%	24,100	13.4%	8.3%	6.2%	6.3%	7.3%	7.2%	9.2%	9.5%	9.1%	8.1%	8.0%
Middle 20%	39,100	18.2%	12.0%	10.3%	10.2%	11.6%	11.3%	14.1%	14.3%	13.6%	11.8%	12.2%
Fourth 20%	59,500	25.9%	18.4%	18.1%	17.3%	18.6%	18.0%	20.8%	20.8%	19.3%	16.3%	18.7%
Next 15%	94,600	25.4%	20.8%	25.4%	24.8%	27.6%	27.6%	21.7%	19.9%	17.5%	14.0%	22.4%
Next 4%	187,000	8.9%	12.9%	14.7%	14.7%	13.6%	13.8%	6.3%	5.6%	5.6%	6.0%	10.5%
Top 1%	784,700	5.2%	25.8%	24.1%	25.6%	20.0%	20.9%	26.3%	28.2%	33.2%	42.3%	26.7%
ALL	\$ 55,600	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
ADDENDUM:												
Poorest 60%	\$ 24,600	34.5%	22.2%	17.7%	17.7%	20.2%	19.7%	24.8%	25.4%	24.4%	21.4%	21.6%
Top 20%	\$ 147,900	39.5%	59.5%	64.3%	65.1%	61.2%	62.3%	54.3%	53.8%	56.3%	62.3%	59.6%

Citizens For Tax Justice, "The Bush Tax Cuts: Are Ohioans Better Off?" Page 3.

In Michigan, where jobs are still being lost, the tax cuts have failed to bring relief to those who need it most. There, 99 percent of all taxpayers gain nothing from the tax cuts, while the richest 1 percent receives nearly 30 percent of the money from the tax cut. Unfortunately, this upward redistribution seems to have done little to stem the tide of lay-offs and job losses, particularly in the manufacturing sector.

Effects of Tax Cuts on Michigan Families and Individuals in 2001-2010: Share of Tax Cuts by Income Group

Income group	Ave. 2006 Income	% of Total Bush Tax Cuts in Michigan										
		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	10 yrs
Lowest 20%	\$ 10,000	2.4%	1.7%	0.9%	0.9%	0.8%	0.8%	1.0%	1.1%	1.1%	1.1%	1.1%
Second 20%	23,900	11.9%	7.6%	5.2%	5.4%	5.8%	5.7%	7.0%	7.2%	6.9%	6.3%	6.4%
Middle 20%	41,100	18.8%	12.9%	10.6%	10.4%	11.2%	10.7%	13.1%	13.3%	13.1%	11.9%	12.0%
Fourth 20%	64,500	26.3%	18.8%	17.4%	16.8%	17.8%	17.1%	19.9%	19.9%	18.5%	15.9%	18.1%
Next 15%	104,600	25.5%	21.0%	26.3%	25.4%	28.5%	28.3%	22.1%	20.2%	18.0%	14.5%	23.0%
Next 4%	198,000	8.7%	12.0%	13.7%	13.4%	12.8%	13.1%	6.1%	5.5%	5.3%	5.6%	9.8%
Top 1%	891,400	6.4%	26.2%	26.0%	27.7%	23.1%	24.3%	30.7%	32.8%	37.0%	44.7%	29.6%
ALL	\$ 59,800	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
ADDENDUM:												
Poorest 60%	\$ 25,000	33.1%	22.1%	16.7%	16.7%	17.9%	17.2%	21.1%	21.5%	21.1%	19.3%	19.5%
Top 20%	\$ 162,100	40.6%	59.2%	66.0%	66.6%	64.3%	65.7%	58.9%	58.6%	60.3%	64.8%	62.4%

Citizens For Tax Justice, "The Bush Tax Cuts: Are Michigan's Families Better Off?" Page 2.

The second report, [A Congressional Tax Report Card](#), is a companion piece to the first and breaks down the voting records of all current congressional representatives on tax policy over the last six years. Representatives and senators are graded based on how they voted on each of the major tax initiatives since 2001.

For reference, the two senators from Ohio voted for the tax cuts an average of 70 percent of the time, while Michigan's senators voted against the tax cuts 90 percent of the time.

The report card's introduction also provides a useful overview of the last six years in tax policy: Congress has cut corporate taxes three times, lowered income tax rates once, and twice moved to lower taxes on capital gains and dividends.

Report Details Abramoff Abuse of Nonprofits, Recommends New Rules

An Oct. 12 report from Senate Finance Committee Ranking Member Max Baucus (D-MT) examines interactions between five tax-exempt organizations and disgraced lobbyist Jack Abramoff and his associates, finding instances of serious abuse. The report recommends a broad expansion of the definition of lobbying, increased disclosure requirements and enhanced penalties for violations. Its recommendations for further action by federal agencies with investigative and enforcement authority has received national attention. Receiving less media attention, however, is committee chair Charles Grassley's (R-IA) call for a more comprehensive examination of the role of nonprofits in lobbying and politics. Nonprofits thus will need to pay close attention to future committee action that could substantially affect nonprofit advocacy rights.

In September 2005, following revelations from a Senate Indian Affairs Committee investigation

into problematic transactions between lobbyist Jack Abramoff and some conservative nonprofit organizations, the minority staff of the Senate Finance Committee launched an investigation that reviewed emails, news reports, IRS Form 990 data, and other materials. The report found that five organizations took contributions from Abramoff and "undertook actions on Mr. Abramoff's clients' behalf." The organizations investigated are:

- *Americans for Tax Reform* (ATR): a 501(c)(4) organization headed by anti-tax activist Grover Norquist
- *Citizens Against Government Waste* (CAGW): a 501(c)(3) organization established in 1984 to eliminate inefficiency in government
- *Council of Republicans for Environmental Advocacy* (CREA): a 501(c)(4) organization created in 1997 by Grover Norquist, former Interior Secretary Gale Norton and Italia Federici
- *National Center for Public Policy Research* (NCPPR): a 501(c)(3) conservative think tank established in 1981 that seeks free market solutions to public policy problems.

Noting that "some officers of these organizations were generally available to carry out Mr. Abramoff's requests for help with his clients in exchange for cash payments," the report details activities that appear to be unrelated to the groups' tax-exempt mission and provide benefit to private individuals, which are not permitted by nonprofit 501(c) groups. These include:

- disguising the source of funds by accepting payments and passing them through to other groups, sometimes after subtracting a substantial fee
- accepting payment for writing op-eds and press releases favorable to Abramoff clients
- facilitating introductions between Abramoff clients and government officials, and
- accepting payment from Abramoff clients to act as front organizations sponsoring trips by members of Congress and their staff.

The central problem with the activities described in the report is that they were unrelated to the organizations' tax-exempt purpose, and benefited organizational insiders or individuals associated with Abramoff, rather than the general public. The report notes that this behavior "amounted to profit-seeking and private benefit behavior inconsistent with their tax-exempt status," calling it "a fraud on other taxpayers." It concludes that, if it is found that a substantial part of the organizations' activities have benefited a for-profit entity or private individuals, the groups could lose their tax-exempt status and the individuals that approved and participated in the activities could be subject to civil and criminal penalties.

The report recommends that the Finance Committee "consider legislation clearly addressing the practices exposed in this report." The following "options for discussion" are listed:

- Expand the definition of lobbying for 501(c)(3) organizations to include payment for travel, meals "and similar expenses" for government officials if the group has a registered

- lobbyist that is a substantial contributor or holds a position of influence in the organization. This would not require that any specific legislation be discussed.
- Expand the definition of lobbying for 501(c)(3) organizations to include "lobbying of the Executive branch (including administrative agencies) and lobbying with respect to federal appointments"
 - Require 501(c)(3) organizations that pay travel costs of government officials to disclose corporate donors and contributions for registered lobbyists
 - Increase tax penalties for excess lobbying by 501(c)(3) organizations
 - Deny a percentage of the tax deduction for donors to 501(c)(3) organizations that mirrors the percent of the group's budget spent on lobbying, and require the groups to inform donors of this amount
 - Consider new rules for groups with members of Congress who are founders or "exercise control" of a 501(c)(3) organization
 - Make corporate contributions to 501(c)(4) organizations that lobby non-deductible as business expenses or treat them as taxable unrelated business income of the organization
 - Treat all contributions to 501(c)(4)s that have any "expectation of a quid pro quo" as taxable unrelated business income
 - Require disclosure of all corporate donors to 501(c)(4)s that lobby, and
 - Subject managers of 501(c) organizations that "knowing accept and disburse contributions" that provide private benefits to excise taxes.

The proposed reforms will require close scrutiny by, and significant discussion within, the nonprofit sector. For example, substantial expansion of the definition of lobbying by 501(c)(3) organizations without a corresponding expansion in the dollar limits on these activities will severely reduce the overall permissible advocacy allowed these organizations. Moreover, as research indicates many nonprofit leaders are confused about what constitutes lobbying - and that confusion leads to less engagement, and expanding that definition will add to the chilling effect on participation. This raises the question of whether abuse by five organizations justifies such changes for the over one million 501(c)(3) organizations recognized by the IRS.

The charities listed in the report should be fully investigated. Following the report's release, the [National Committee for Responsive Philanthropy issued a statement](#) calling on the IRS to conduct a thorough investigation. A [statement from Independent Sector](#) expresses deep concern with the findings, and promises to "work closely with Congress to ensure that any legislation ...preserves the ability of charitable organizations to engage with lawmakers on policy matters on a nonpartisan basis."

First Church Electioneering Bill Introduced in Senate

On Sept. 27, Sen. James Inhofe (R-OK) introduced [S.3957](#), the Religious Freedom Act of 2006, which would prevent houses of worship from losing their tax-exempt status if they speak out on

"public issues, election contests, and pending legislation made in a theological or philosophical context." The bill was sparked by increased scrutiny on religious and charitable organizations as specific cases of possible partisan campaign intervention have come to light. Similar legislation has failed to pass in the House during this Congress.

The bill aims to grant houses of worship permission to endorse candidates and engage in partisan political activity without risking their tax-exempt status. These organizations could also be allowed to make political contributions to candidates and political parties.

With vague language and no definition for "election contests," S. 3957 could open the door to allow places of worship to engage in highly partisan activity. The bill also discriminates against non-religious 501(c)(3) organizations, which would still be prohibited from engaging in similar political activity. If the standards for 501(c)(3) organizations are changed, all 501(c)(3)s, including secular ones, should be granted the same speech rights.

The legislation is similar in principle to the [H.R. 235](#) Houses of Worship Free Speech Restoration Act, introduced in the House by Rep. Walter Jones (R-NC). While the bill failed in the House, a renewed campaign for its passage, the "Houses of Worship Free Speech Petition," has been taken up by The American Center for Law and Justice.

Religious organizations are among organizations exempt from federal income taxes by Section 501(c)(3) of the Internal Revenue Code, which also exempts charities, educational and scientific organizations. This is the only category of exempt organizations that receives tax-deductible contributions. Accordingly, it is the only category subject to a prohibition on partisan activity. The IRS notes "all 501(c)(3) organizations, including churches and religious organizations, are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office." These organizations can not endorse any candidate, make campaign donations, or become involved in any other direct or indirect activity that may either help or harm a candidate, including fundraising. However, the IRS also says that "501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office." (For more information, read IRS Fact Sheet 2006-17 [Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501\(c\)\(3\) Organizations](#).)

Introducing the legislation on the Senate floor, Inhofe told his colleagues, "They [Americans] may be surprised to learn that the Federal Government of the United States of America, in the land of the free, does not allow religious leaders in houses of worship of all religious orders to say anything that might be construed as political in nature." Inhofe is mistaken when he asserts that religious leaders can not comment on the issues of the day. Inhofe's claim ignores the fact that such organizations are allowed to engage in issue advocacy. The law distinguishes between taking positions on issues and taking positions on candidates. Houses of worship are bound to be a haven

for issue advocacy with so many public policy debates are tied to religious values.

If the rules regarding religious organizations and charities participation in elections were more precise and the role these groups can positively play in public policy debates was better defined by law, perhaps places of worship would not feel they are denied their right to free speech. IRS enforcement of electioneering ban has raised serious questions about this lack of clear standards and even-handedness. These problems are reflected in the campaign to promote S. 3957.

Databases Monitor Activity of Peace Activists, Public Opinion

The American Civil Liberties Union (ACLU) has revealed more evidence of Pentagon spying on nonprofits that oppose the war in Iraq. Meanwhile, new Homeland Security Department programs that will monitor public opinion, emails and blogs raise further concerns about the free speech rights of nonprofits and the civil liberties of Americans.

The ACLU issued a [press release](#) on Oct. 12 detailing a military anti-terrorism database that keeps records on non-violent protest groups. According to that release, the Pentagon has conducted surveillance of groups opposed to the Iraq war, such as student groups and Quakers, who are committed to nonviolence.

As reported in previous Watcher articles on [Feb. 7, 2006](#) and [June 27, 2006](#), the ACLU filed a Freedom of Information Act (FOIA) request after news reports revealed that the Pentagon was secretly conducting surveillance of anti-war organizations, protest activities, and those opposed to military recruitment. The Pentagon shared the collected information with other government agencies through the Threat and Local Observation Notice (TALON) database, which was intended to track individuals with links to terrorism. This equates peaceful anti-war activity with terrorism, raising serious civil liberties concerns.

Elaborating on the ACLU revelations, [The New York Times](#) reported last week that "intelligence reports and tips about antiwar protests, including mundane details like the schedule for weekly planning meetings, were widely shared among analysts from the military, the Federal Bureau of Investigation and the Department of Homeland Security."

The ACLU release highlighted several examples of Pentagon surveillance in Ohio, Massachusetts, Florida and Texas, noting "One document, which is labeled 'potential terrorist activity,' lists events such as a 'Stop the War NOW!' rally in Akron, Ohio on March 19, 2005. The source noted that the rally 'will have a March and Reading of Names of War Dead' and that marchers would pass a military recruitment station and the local FBI office along the way."

Still more frightening an example of surveillance of Americans who do not pose any harm is the Homeland Security's Analysis, Dissemination, Visualization, Insight, and Semantic Enhancement (ADVISE) program, one of the 12 data mining programs being test by the department. [Congress](#)

[Daily](#) (subscription required) reports that concerns have been raised that the ADVISE program could be an infringement on privacy rights. ADVISE collects online public information, including emails and blogs, and then cross-references it against all other records on individuals. The information is then shared with federal, state, and local government agencies.

The concept of mass surveillance of public opinion is taking a further step, according to a recent [New York Times article](#), which reveals that Homeland Security money has been given to numerous universities in the form of \$2.4 million in grants to develop software that would allow the government to monitor negative opinions of the United States in publications abroad. This comprehensive monitoring of global news would be used to identify potential threats. It could also be used to monitor negative opinions of administration policies by domestic organizations, opening the door to the kinds of surveillance discovered by the ACLU on an even broader scale. In addition to the likelihood of serious errors in software interpretations of public opinions, the program could likely have a chilling effect on speech worldwide.

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