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The Watcher

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An Assault on Public Protections: Regulatory Policy News in 2008

The federal government's ability — and sometimes inability — to protect the public drew national attention throughout 2008. President Bush's and senior administration officials' aversion to regulation and their penchant for allowing the market to operate unchecked appeared more and more outmoded in the face of the collapse of the financial market, the rising tide of dangerous imported products, and persistent examples of environmental degradation.

Throughout 2008, the Bush White House continued to meddle inappropriately in the affairs of regulatory agencies by distorting science, changing policy outcomes, and inventing a system whereby new agency rules would leave the incoming Obama administration with the task of implementing Bush-era priorities.

White House Interference

In April, the U.S. Environmental Protection Agency (EPA) [announced](#) it was changing its process for studying the risks of toxic chemicals under its Integrated Risk Information System program. The changes give the White House Office of Management and Budget (OMB) — an

office with little scientific knowledge — a greater role in the risk assessment process.

EPA will now involve OMB at every stage of the IRIS assessment process. OMB already reviews — and often edits — agencies' proposed and final regulations. The office will now have several opportunities to review and alter the scientific findings that serve as the basis for chemical exposure standards.

OMB and EPA have stuck by the changes despite criticism from Congress, a critical [report](#) from the Government Accountability Office (GAO), and objections of EPA staff over the role of OMB in agency science.

OMB also continued to alter the substance of individual agency rules. In most cases, OMB's interference weakened requirements proposed at the agency level. For example:

- In March, President Bush himself [stepped in](#) to force EPA to abandon its plan to set a seasonal standard for ozone exposure tailored especially to the needs of plant life. OMB challenged the scientific basis for EPA's decision and encouraged the agency to consider the economic impact of the new standard, even though the Clean Air Act prohibits EPA from weighing costs in setting air standards. After EPA resisted the pressure, Bush was brought in to arbitrate the dispute and sided with OMB.
- In October, EPA tightened the national public health standard for airborne lead, drawing rare praise from clean air advocates. However, shortcomings in the network for monitoring lead pollution persist. EPA was prepared to require installation of new monitors near facilities emitting 1,000 pounds or more of lead pollution. But an e-mail exchange between EPA and OMB less than 48 hours before the final rule was announced shows that OMB [pressured](#) EPA to raise the threshold to 2,000 pounds. The change means state and local officials will not be required to place new pollution monitors near at least 124 facilities that emit lead.
- The White House also [watered down](#) a rule expanding protections for the endangered North Atlantic right whale. The National Oceanic and Atmospheric Administration (NOAA) initially proposed extending the protection area in which the new rule would be enforced to 30 nautical miles off shore. When NOAA announced the final rule in October — after a White House review that lasted 573 days — the protection zone had shrunk to only 20 nautical miles.

OMB directed its most strident opposition toward new regulations that would have addressed climate change. The White House completely dismantled the efforts of EPA staff to curb greenhouse gas emissions.

A House investigation into EPA's 2007 decision to prohibit California from adopting its own tailpipe emissions controls [showed](#) the White House may have played a role in denying the state's climate change policy. EPA Administrator Stephen Johnson had been willing to grant California's request but changed his mind after a meeting with White House officials,

according to the House report released in May 2008. The denial precludes as many as 19 other states from adopting similar emissions reduction programs.

The White House also [blocked](#) federal efforts to reduce greenhouse gas emissions. After developing a regulatory roadmap to reduce both vehicle and stationary source emissions, White House officials prohibited EPA from releasing its plans to the public.

In response to a 2007 U.S. Supreme Court decision, EPA began to develop documents showing that climate change poses a danger to the public and a regulatory plan for addressing climate change by reducing greenhouse gas emissions.

But when EPA sent the material to OMB for review, OMB refused to open the e-mail. OMB officials feared the documents would make a compelling case for greenhouse gas regulation.

By March 2008, EPA completely abandoned its plans to begin regulating emissions. Johnson pledged to issue a so-called Advanced Notice of Proposed Rulemaking (ANPRM), which would only solicit opinions on climate change and regulatory methods for addressing it. The ANPRM, published in July, proved a disappointment. OMB prodded the agency to delete references to climate change's impact on public health and welfare.

Still not content, the White House distanced itself from the notice. Susan Dudley, head of the OMB's regulatory clearinghouse, the Office of Information and Regulatory Affairs (OIRA), said the policy "cannot be considered Administration policy or representative of the views of the Administration."

Other letters of disapproval came from the heads of the departments of Agriculture, Commerce, Energy, and Transportation; the White House Council of Economic Advisors and the Office of Science and Technology Policy; the Small Business Administration Office of Advocacy; and the White House Council on Environmental Quality.

Midnight regulation

A [flurry](#) of regulatory activity at year's end, prompted by the White House, stands in stark contrast to the pattern of obfuscation discussed above. The Bush administration launched a broad midnight regulation campaign in an attempt to [leave](#) an administrative legacy.

In May, the White House laid down a path for agencies to follow. White House Chief of Staff Joshua Bolten issued a [memo](#) instructing agencies to propose by June 1 rules they wished to finalize under Bush's watch and to finalize all rules by Nov. 1. The November deadline would prove the more critical one.

The administration worked furiously through the summer months. In spite of Bolten's June 1 deadline, agencies proposed rules intended to limit women's access to reproductive health services, open broad swaths of land in the west to energy development, and systematically alter the scientific basis for future rules that protect industrial workers from exposure to toxic

substances.

An Interior Department rule on the Endangered Species Act moved at warp speed. In August, Interior proposed allowing federal land-use managers to approve projects like infrastructure creation, minerals extraction, or logging without consulting habitat managers and biological health experts responsible for species protection.

The proposal met with fierce opposition. Interior received about 300,000 public comments, mostly negative, on its proposal after it was unveiled in August. According to an internal e-mail obtained by the Associated Press, Interior [tried](#) to review all the public comments in just four days, or about seven comments per minute.

By November, the campaign began to bear fruit when agencies completed several rules. The Department of Transportation finalized a rule allowing truck drivers to drive up to 11 consecutive hours and shortening required rest times. A Department of Labor rule announced in November will make it more difficult for workers to take unpaid leave to care for themselves or a family member. The administration even pushed through cuts to Medicaid — a particularly dubious decision considering the current economic climate.

The pace only accelerated in December. Many of the rules target the environment. Rules finalized in the first half of December would:

- Make it legal for mining companies to dump into rivers and streams the waste generated from mountaintop mining
- Exempt farms from reporting air pollution generated from animal waste
- Lift the 25-year-old-ban on carrying loaded weapons in national parks
- Remove the requirement for scientific consultation under the Endangered Species Act (as discussed above) and eliminate climate change as a factor in decisions about species protection

Bush's flurry of last-minute activity is typical for presidents in their waning days of power. President Bill Clinton generated tomes of *Federal Register* pages with his last-minute rules. As late as Friday, Jan. 19, 2001, the Clinton administration was sending rules to the Office of the Federal Register for publication the following Monday, when Bush would have already taken power.

But Bush's 11th hour push, pursued with great forethought and shrewdness, may prove more successful than Clinton's. Even after a rule is finalized and published in the *Federal Register*, agencies must wait at least 30 or 60 days (depending on the significance of the rule) before making the rule effective. Since Clinton waited until January 2001 to issue rules reflecting his priorities, Bush administration officials maintained some discretion to reevaluate those rules not in line with their views. As a result, several rules finalized and published under Clinton were killed by the new Bush officials.

Now Bush appears to be trying to prevent Barack Obama from doing to him what he did to

Clinton. Since the Bush administration finalized many of its rules in November and December, that 30- or 60-day window will be closed come Jan. 20, 2009. Sixty-day rules finalized before Nov. 20 will take effect, as will 30-day rules finalized by Dec. 19.

Ignoring Science

The Bush administration continued to ignore or downplay scientific evidence in its strategy to protect businesses from what it sees as a burdensome regulatory process. This is a continuation of the approach the administration has taken on so many public policy issues, from environmental protection to public health.

The U.S. Food and Drug Administration (FDA) continues to claim that there is insufficient evidence about the health effects of bisphenol-A (BPA), a chemical widely used in consumer products, to justify regulating the substance. Despite mounting evidence that BPA may affect human development and mental health, FDA continues to advise consumers that there is no reason to "discontinue using products that contain BPA."

The latest evidence on BPA are a Yale School of Medicine study that links the chemical to brain functions and mood disorders and a study published in the *Journal of the American Medical Association* (JAMA). The [Yale study](#) concluded that exposure to the chemical may result in memory loss, brain impairment, and depression at the exposure level the EPA has established as safe. (EPA has the responsibility for setting safe chemical exposure limits, while FDA can limit or ban the use of BPA in food-related items.)

The [JAMA study](#) was conducted by a team of British and American scientists and compared the level of BPA in human urine. They discovered a link between exposure and diabetes and heart disease. This and other recent studies follow earlier analyses of BPA that led to warnings and product withdrawals.

FDA, meanwhile, continues to claim the science regarding BPA is too uncertain to warrant regulation of the chemical in food products and is not recommending consumers change their habits regarding BPA-based products. An Aug. 14 [Draft Assessment of Bisphenol A for Use in Food Contact Applications](#) being circulated for FDA's scientific peer review program concludes that there is no adverse health effect from BPA. The draft assessment continues to rely heavily on two industry-funded studies that formed the basis of FDA's earlier assessment of BPA.

EPA has also balked in the face of scientific evidence. The agency routinely ignores recommendations from an advisory committee established to assist it in creating policies to protect children's health. On Sept. 16, a GAO official told a Senate panel that the advisory committee was "to provide advice, information, and recommendations to assist the agency in the development of regulations, guidance, and policies relevant to children's health." Committee members include public health officials from government, nonprofits, academia, industry, and health care organizations.

GAO concluded that in more than 30 meetings of the advisory committee in the first ten years, "EPA has rarely sought out the committee's advice and recommendations to assist it in

developing regulations, guidance, and policies that address children's health." EPA requested advice from the committee on regulations only three times, on guidance three times, and only once on developing a policy. Yet the committee sent over 600 recommendations for action to EPA on issues like particulate matter, ozone, lead, pesticides, mercury regulation, and farm worker protections over the period that GAO reviewed.

Before the White House watered down a new rule to expand protection for the North Atlantic right whale, as mentioned above, it delayed finalizing the rule while the office of Vice President Dick Cheney and other executive offices questioned the findings of scientists at NOAA. NOAA proposed speed limits on large ships traveling in Atlantic Ocean whale migration areas during seasons when the right whale is most active. Collisions with ships are a major cause of death of the right whale, one of the most endangered whale species in the world, according to NOAA.

The White House Council of Economic Advisors (CEA) changed and reanalyzed statistics in a model intended to determine the relationship between ship speed and the risk to right whales. Based on the recalculations, the CEA called NOAA's analysis "biased." Cheney's staff "contends that we have no evidence (i.e., hard data) that lowering the speeds of 'large ships' will actually make a difference." In response, NOAA staff cited records of collisions in which right whales were killed or seriously injured and again argued in favor of ship speed limits.

The right whale rule was sent to OIRA in February 2007. OIRA is supposed to complete its review within 120 days but held the right whale protection rule for 21 months. OIRA finally gave its approval Sept. 15, and NOAA published a weakened rule Oct. 10. The rule went into effect Dec. 9, according to [NOAA's website](#).

Product Safety

Product safety issues remained a concern in 2008, although there were fewer crises in both food and consumer items than in 2007. Congress made progress in restoring some of the government's ability to safeguard products, but some incidents underscored how much work remains.

In July 2008, Congress reached agreement on legislation to enable the Consumer Product Safety Commission (CPSC) to better enforce safety standards in markets dominated by cheap imports and required new standards for dangerous substances like lead and phthalates. After months of negotiations, dating back to 2007, Congress passed the [Consumer Product Safety Improvement Act of 2008](#), and President Bush signed the bill into law Aug. 14.

The act authorizes increases in CPSC's budget to \$136 million by FY 2014, nearly a 75 percent increase over current levels. However, the increases must still be appropriated in the spending bills Congress takes up each year. One part of the bill bans certain phthalates, a class of chemicals found in a variety of plastic products, from children's toys. Three other phthalates are banned temporarily pending further study. This action represents a dramatic shift in the government's approach toward regulating toxic substances. Usually, chemicals enter and stay on the market without regulation and are only pulled if scientists prove a definitive health risk. In this case, the banned substances will only be allowed back on the market if their safety is

proven. The act also bans lead in children's products to trace amounts. (Read a summary of the bill's contents [here](#).)

The [inability](#) of government agencies to track food sources during foodborne illness outbreaks was again illustrated in the spring and summer months. Federal officials had significant difficulty providing consumers with information on two separate outbreaks. Investigators searched for months for the source of a salmonella outbreak, and officials were unable to provide detailed information for consumers on a batch of *E. coli*-contaminated beef, which had spread to a number of states across the country.

FDA announced a warning against consuming certain types of raw, red tomatoes June 7 after more than 100 consumers had been sickened by a rare strain of salmonella. But more than a month after announcing the warning, and almost three months since the first cases of salmonella were reported, the FDA still had not pinpointed the source of the contamination. The FDA subsequently expanded its investigations to include peppers and cilantro. After a three-month investigation focusing mainly on tomatoes, FDA traced the contamination to serrano and jalapeño peppers imported from Mexico. The outbreak sickened 1,442 people in 43 states, Washington D.C., and Canada.

The U.S. Department of Agriculture (USDA) also left consumers in the dark after an *E. coli* outbreak was linked to contaminated beef. In a June 30 announcement, USDA recalled half a million pounds and covered shipments sent to processors and wholesalers in Colorado, Illinois, Michigan, Nebraska, New York, Pennsylvania, and Texas.

On July 3, USDA expanded the recall to 5.3 million pounds. While USDA quickly identified the source of the contaminated beef — Nebraska Beef in Omaha — it gave no further indication as to where the Nebraska company had shipped the contaminated beef or how processors, wholesalers, retailers, and consumers could identify it.

A public health crisis originally thought to be limited to China crept into the U.S. when on Sept. 26, FDA announced recalls of products tainted by melamine. Then, on Oct. 3, FDA [announced](#) a new standard for melamine. FDA released an interim assessment that determined melamine to be safe in food at levels of 2.5 parts per million or lower while simultaneously saying that no amount of melamine in baby formula is safe. On Nov. 28, FDA reversed its baby formula position and set an allowable standard of one part per million of melamine if certain other chemicals are present, according to a [Washington Post article](#).

The melamine recalls reignited concern over FDA's ability to adequately police the rising tide of imported food reaching American consumers. From 2002 to 2007, food imports increased 84 percent, according to the [GAO](#).

In response to the many pressures put on FDA by the import safety crisis, Department of Health and Human Services (HHS) Secretary Michael Leavitt announced Oct. 16 that FDA would start to send personnel overseas to staff offices to help ensure the safety of imported food and drugs. The plan calls for staff to be assigned to offices in China, India, Europe, and

Latin America. Many assignments will begin before the end of 2008. A total of eight U.S. officials will operate in China. Ten employees will be posted in India once arrangements are negotiated with Indian officials. Other offices will open in nine Latin American countries, in Europe, and in the Middle East, according to an FDA [press release](#).

The FDA staff will work with government officials and the companies producing the goods in an effort to improve quality assurance. They will inspect facilities, provide technical assistance, and help create third-party certification programs, according to the announcement. The certification programs require HHS to accredit independent organizations that would inspect manufacturing and production facilities and declare that the products meet U.S. import standards. Once their facilities are certified, the firms' products would gain expedited entry at American ports. Companies that do not meet certification would continue to work with FDA staff and government officials to improve the safety of their products.

The hostility exhibited by the Bush administration toward public protections has increasingly come under fire in the last few years. The importance of government's role in safeguarding so many aspects of our lives is illustrated most starkly by the impact of — and the public's shock at — the failure to regulate the financial and housing sectors. This failure comes on the heels of the threats from poorly regulated consumer products and the relentless attack on environmental protections. The time has come for a new administration and Congress to make real efforts to reform a badly broken regulatory process.

2008 Fiscal Policy Year in Review

It's been an exceptional year. 2008 saw not only economic indicators that evoked memories of the Great Depression, but also a record-breaking federal budget deficit. The federal government, through several agencies, activated trillions of dollars in loans and asset guarantees. Congress approved the largest supplemental spending bill in its history and gave the Treasury Department the authority to expend the equivalent of three-fourths of the federal discretionary budget on one sector of the economy. But in many other ways, Congress proved to be unremarkable by staying true to its recent history of underachievement.

While the national economic crisis drew the attention of Congress, prompting historic legislative action, the nation's lawmakers followed 2007's legislative blueprint in several key respects. Similar to 2007, Congress failed to adhere to the regular budget-making process and instead relied on a continuing resolution to fund the operations of the government for another six months. It once again used the emergency funding process to pay for wars that have lasted for more than six years and raised the national debt ceiling yet again. And Congress, like in 2007, waited until the absolute last minute to pass a package of expiring tax provisions.

Unlike Congress, OMB Watch's Federal Fiscal Policy Program is trying something completely different for the 2008 Year in Review *Watcher*. When we sat down to discuss what happened in 2008, we decided that instead of merely writing summaries of our *Watcher* articles and blog posts from this past year, we would invite you to virtually sit down with us and listen in on our

conversation. We now present to you a series of three videos, available on YouTube, in which we discuss the events of the year in fiscal policy — 2008.

[In the first video](#), we discuss the economy, fiscal stimulus, and the Frank-Dodd housing bill.



[In Part II](#), we talk about the Troubled Asset Relief Program (TARP), other federal bailouts, the budget process, and tax policy.



[In the last segment](#), we discuss the federal budget deficit, the national debt, and federal contracting.



Joe the Discloser -- Government Transparency in 2008

This year's historic presidential campaign introduced the country to a plethora of vocational symbols. It not only featured Joe the Plumber, but also Tito the Bricklayer, Rose the Teacher, and more. There were also a few Joes and Janes who had prominent roles in the restriction — and in a few cases, the expansion — of public information that may have gone unnoticed during the year. Hopefully for the last time in the life of our Republic, the government transparency events of 2008 are presented below according to vocational nomenclature.

George the Shuffler — George W. Bush, President of the United States

The Bush administration began 2008 by quickly trying to [rewrite](#) the OPEN Government Act passed in December 2007. The act created an office at the National Archives and Records Administration (NARA) to monitor implementation of the Freedom of Information Act (FOIA) and oversee disputes before litigation became necessary. However, the administration slipped a provision into the Department of Commerce section of its FY 2008 budget proposal that would have reshuffled the office from NARA to the Department of Justice (DOJ). Thankfully, Sen. Patrick Leahy (D-VT), an original sponsor of the OPEN Government Act, discovered the location shift and successfully fought to keep the office at NARA.

Nancy the Immunizer — Rep. Nancy Pelosi (D-CA), Speaker of the House

Another issue that carried over from 2007 into early 2008 was the congressional stalemate between the Senate and the House on immunity for telecommunications companies that participated in the Bush Administration's warrantless wiretapping program. The Senate [passed](#) legislation ([S. 2248](#)) that contained retroactive immunity for telecommunications companies, while the House left immunity out of its bill ([H.R. 3773](#)). Initially, Rep. Nancy Pelosi, Speaker of the House, led Democrats in refusing to consider immunity, even to the point that several wiretapping authorities expired. However, after months of negotiations, Pelosi and House Democrats acquiesced and approved a bill ([H.R. 6304](#)) that essentially granted [retroactive immunity](#) by requiring courts to throw out lawsuits against any company that showed that its activities were authorized by the president. Pelosi had initially opposed modifying the Foreign Intelligence Surveillance Act in this manner, but when she changed her position, the new bill quickly passed the House and [the Senate](#) in July. President Bush immediately signed the bill into law.

Steve the Factory Farmer — Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency

Stephen Johnson, Administrator of U.S. Environmental Protection Agency (EPA), made many decisions in 2008 deemed questionable by critics, including several rules relating to farms and pesticides. For instance, EPA's late 2007 [proposed rule](#) exempting factory farms from reporting air pollution from animal waste was the subject of 2008 congressional [hearings](#) that discussed how large chicken farms and other concentrated animal feeding operations are major sources of pollution.

On another front, the conservation group Natural Resources Defense Council (NRDC) [sued the agency](#) for failing to provide the organization with an industry analysis of the dangers of a particular pesticide that was likely killing bees by the thousands. Following in Johnson's footsteps, the U.S. Department of Agriculture (USDA) also reduced the amount of pesticide information being collected and [canceled](#) the [Agricultural Chemical Usage Reports](#), the only publicly available data on pesticide use in the country.

Andrew the Litigator — Andrew M. Cuomo, New York State Attorney General

There were some public officials who pushed for greater transparency and greater accountability to the public in 2008, and Andrew Cuomo, the attorney general for the State of New York, was one of them. Cuomo [pressured](#) the Securities and Exchange Commission to require businesses to report to investors their greenhouse gas emissions and the risks that climate change poses to their operations. Cuomo's investor right-to-know measure was paired with recent agreements his office negotiated with two major energy producers to disclose publicly their yearly greenhouse gas emissions and their plans to handle climate change risks. Cuomo's office also kept up its drive to expand reporting of toxic releases, persevering with a multi-state lawsuit against a 2006 EPA rule that relaxed reporting requirements under the Toxics Release Inventory (TRI).

Edward the Watchdog — Rep. Edward J. Markey (D-MA), chairman of the Select Committee on Energy Independence and Global Warming

Another strong advocate for increased accountability on how government uses scientific data was Rep. Edward J. Markey, chairman of the Select Committee on Energy Independence and Global Warming. Markey [questioned](#) members of the Bush administration regarding the delay of a decision to list polar bears under the Endangered Species Act until a controversial lease sale for oil drilling off of Alaska was completed.

Karl the Deleter — Karl Rove, Former Deputy Chief of Staff to President George W. Bush

Unfortunately, despite the ease with which e-mails and electronic information can be saved, this was not area in which that the government fared well in 2008. Back in 2007, investigations into the leak of CIA operative Valerie Plame's identity and the firing of a group of U.S. Attorneys uncovered serious problems with e-mail record keeping practices at the White House. Karl Rove, Senior Advisor, and other White House staff members were reportedly using Republican National Committee e-mail addresses to avoid requirements to archive official White House e-mail. Thousands of e-mails related to vital political issues of the time were lost. In response, the House passed a bill ([H.R. 5811](#)) to ensure [oversight](#) of e-mail preservation. However, the bill did not move in the Senate, and the lack of oversight and standards for preserving e-mails remains a problem.

States suffered from problems with e-mail, as well. Supervisors in Loudoun County, VA, were [ordered](#) to hand over e-mails from their personal accounts that may have contained official business. However, antiquated state laws in Virginia fail to define procedural guidelines on reviewing such material. The e-mail question also arose during the recent election season, when Alaska Governor Sarah Palin, the Republican nominee for vice president, was asked to release over 1,000 e-mails in a state FOIA request. According to [press accounts](#), Palin used a Yahoo! account to conduct official business.

Steve the Loyal Soldier — Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency

Johnson returns to our line-up because he wore several hats related to transparency during the year. In 2008, a congressional investigation sought clarification on the administrator's decision to not label carbon dioxide a risk to public health and welfare. The investigation revealed that Johnson initially advised the White House that climate change was a threat to public health and merited regulation. Without reviewing the EPA's initial findings, the White House pressured the agency to change the findings. Johnson eventually [revised](#) the findings of the agency and downplayed the scientific evidence. The decision meant the administration could avoid regulating carbon dioxide under the authority of the federal Clean Air Act. The EPA's original findings are [still unavailable](#) to the public, and the agency has allowed only four senators to read it.

Tom the Information Screener — Ambassador Thomas McNamara, Information Sharing Environment (ISE) Program Manager

Despite moving forward with a new policy on controlled unclassified information (CUI) in 2008, the Bush administration and Congress have not made significant progress in addressing the full scope of the problem. In 2007, Ambassador Thomas McNamara had [testified](#) that over 100 CUI labels were being used, and many were redundant. In December 2007, McNamara offered recommendations for policy changes to improve information sharing. The administration responded in May with a [memorandum](#) establishing only three possible CUI labels for use by agencies, but it limited the framework solely to "terrorism related information" and made no attempt to limit the amount of information stamped with the new labels.

Congress, not fully satisfied with the administration's new policy, considered a June CUI bill ([H.R. 6193](#)) that would have established regular auditing and reporting to Congress on CUI but only for the [Department of Homeland Security](#). Another bill ([H.R. 6576](#)) that addressed the issue government-wide was also introduced, but both only passed the House; they did not advance in the Senate.

John the Roadblock — Rep. John D. Dingell (D-MI), outgoing chairman, House Committee on Energy and Commerce

On many issues, Congress seemed to have difficulty passing legislation in 2008, and Rep. John Dingell's House Committee on Energy and Commerce seemed to be where more than a few legislative efforts to expand the public's right to know ran into insurmountable roadblocks. Dingell's committee failed to move on a measure to require natural gas companies to disclose the chemicals used in drilling operations, which were shown in a [recent investigation](#) to have polluted drinking water in several states. [Chemical security bills](#) also made little progress in Dingell's committee. A bill that would have fully replaced a temporary 2006 chemical security law with a more comprehensive program never got past a June 12 hearing in the House Subcommittee on Environment and Hazardous Materials. Perhaps in 2009, with Henry Waxman (D-CA) in charge of the House Energy and Commerce Committee, greater progress on these and other transparency issues will be achieved.

Molly the Librarian — Molly A. O'Neill, Assistant Administrator for Environmental Information and Chief Information Officer, U.S. Environmental Protection Agency

The EPA's Chief Information Officer, Molly O'Neill, played a significant role in environmental right to know issues in 2008. Her office, a political appointment, was given complete control over the agency's library network. Several of the EPA libraries began the year shuttered, with their contents scattered and unaccounted for. Congressional [action](#) late in 2007 forced EPA to [schedule the reopening](#) of three regional libraries and the Headquarters and Chemical libraries in Washington, DC. A subsequent [agreement](#) with one of EPA's employee unions produced a plan for more accountability and better conditions for the libraries and their users. Finally,

after two years, the libraries were [reopened](#) at the beginning of October.

John the Secret Law Giver — John Elwood, Deputy Assistant Attorney General

In May, the Senate Judiciary Subcommittee on the Constitution held a [hearing](#) on the role of decision making by the Department of Justice's Office of Legal Counsel (OLC), which interprets laws passed by Congress. These interpretations have great influence on executive branch action and are critical to deciding how laws are implemented. The OLC is infamous for John Yoo's secret 2002 torture memorandum, which limited the definition of torture to interrogation that results in "death, organ failure or the permanent impairment of significant bodily function." Despite the importance of these opinions, John Elwood, current head of the OLC, argues that the office's decisions should receive attorney-client protection from disclosure so the president can receive confidential advice. In a similar development, the DOJ developed in secret a policy for [broader investigative powers](#) for the Federal Bureau of Investigation (FBI). DOJ refused to share copies of the rule with legislators or the public until it was finalized.

George the Budget Butcher — George W. Bush, President of the United States

During 2008, as well as other years of the Bush administration, budget cuts meant the public would receive less information on health and environmental issues. A recent retrospective report produced by NRDC catalogues numerous instances where Bush administration budget cuts affected monitoring programs related to environmental and public health. The report, [*Deepest Cuts: Repairing Health Monitoring Programs Slashed under the Bush Administration*](#), cites 22 health monitoring programs whose activities were reduced or whose budgets were either cut or eliminated, are inadequate, or were restored only after court intervention. Examples include budget cuts to the Centers for Disease Control and Prevention's (CDC) biomonitoring program, reduced EPA monitoring of lead levels in the air, and the reduced reporting requirements of the TRI program. Miriam Rotkin-Ellman, environmental health scientist at NRDC in San Francisco and an author of the report, said, "Not testing or tracking pollution doesn't make it go away. It just keeps us in the dark about real health threats."

Barack the ~~Wealth~~ Information Spreader — Barack Obama, President-elect of the United States

During the 2008 presidential campaign, Barack Obama (D) made strong commitments to new [ethical standards](#), with improved government transparency and accountability prominently featured. As the president-elect's transition team busily prepares for the upcoming transfer of executive power, its use of interactive online tools has established high expectations for the next administration. The transition website, [change.gov](#), features videos, [interactive discussions](#), and questions, as well as [a library](#) of all materials the transition team is receiving, with an online discussion available for each document. The whole site is also being managed under a creative commons license that allows others to reuse the materials without infringing on copyright. Tune in at the end of 2009 to see how well Obama did in transferring these

policies to the federal government.

'Twas the Night before New Year

'Twas the night before New Year
And all through the Nation
The people were hopeful
Looking toward Inauguration.

Nonprofits were happy
Their voices might be heard
And silencing through
Rules and surveillance may be deterred.

We've been taking great care
To preserve nonprofit speech rights
Now we reflect on the past year
And the battles we had to fight.

There was [Pulpit Freedom](#) Sunday
[Misguided](#) at best
Where 33 pastors
Challenged the IRS.

They believe partisan electioneering
From the pulpit is OK
And churches should be tax-exempt
No matter what the preacher may say.

It would give religious groups rights
Other groups don't [enjoy](#)
And create an indirect taxpayer subsidy
For partisan sermons and other ploys.

The elections brought claims
Of [voter suppression](#)
But nonprofits were active
With [voter protection](#).

There also were claims
Of voter fraud
But [nonprofit research](#) shows
That most claims are hogwash.

Helping voters register
By some states was [precluded](#)
But nonprofits pushed back
To make sure none were excluded.

[Climate change groups](#)
Ran into rules on campaign finance
That hindered their advocacy
On non-electoral issues they advance.

What constitutes express advocacy?
[It isn't defined](#)
But it triggers FEC limits
On donors and money combined.

Then the [American Issues Project](#)
Was news around the election
Its ads connecting Obama with Ayers
Were quite the obsession.

But it did raise the issue
Of the role of a 501(c)(4)
And [how far such groups can go](#)
Without a history of issues they explore.

The debate over [donor disclosure](#)
Was all in the press
[Litigation was rampant](#)
It is quite a mess.

The ACLU deftly exposed
The [government error](#)
Of spying on nonviolent advocacy
As if it were [terror](#).

Our [report *Collateral Damage*](#)
Showed how laws meant to make us secure
Make [aid hard to manage](#)
And [fairness standards poor](#).

With a New Year near
And a [brand new administration](#)
Hopefully, diminishing the speech rights of nonprofits
Will no longer be a sensation.

So as we look to the New Year
With 2008 in hindsight
Happy New Year to all
It's been quite a fight.

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