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Minnesota Experiences Unprecedented Government Shutdown Due to Budget Deadlock

A budget deadlock in the Minnesota state legislature led to a partial shutdown of the state government, temporarily leaving thousands jobless and halting many important public services. This government shutdown, unprecedented in Minnesota, could have been avoided had the legislature passed a simple stopgap spending bill to fund the government at previous levels until a new budget could be worked out.

Hundreds of frustrated citizens and workers gathered in front of the state capitol last week to protest the government shutdown and call for passage of a spending bill or temporary resolution to end the deadlock. The shutdown did not prevent members of the legislature and other state politicians from continuing to draw their own salaries, while thousands of state government employees were left without a paycheck.

The budget negotiations broke down June 30, which coincided with the expiration of the previous fiscal year's budget. Lawmakers were specifically divided along party lines over financing for education and health care, and measures to raise extra state revenue.

Governor Tim Pawlenty (R), House Republicans, and members of the Democratic Farmer-Labor (DFL) party reached a tentative agreement concerning funding specifics on the morning of July 9, but the deal still awaits approval by the full legislature. Legislators are expected to hash-out final details over the next few days.

Not only were thousands left jobless, but vital state services were also affected by the week-long shutdown. The Transportation Department, with the most closings, temporarily discontinued issuing new driver's licenses. The government did call back several Health Department laboratory workers to handle what turned out to be a busy weekend investigating suspected cases of salmonella, Legionnaires' disease and West Nile virus. In addition, select judicial decisions, which some believe violated the state Constitution, allowed government functions in key agencies to continue without legislative appropriations.

For many who have monitored developments related to the shut down, the Minnesota state government took far too long to put partisan difference aside and reach a compromise. The temporarily unemployed workers were forced to use their vacation time during the budget crisis. Had the shut down continued through July 15, as it threatened to, these workers would have been laid off. According to Commissioner of Employee Relations Cal Ludeman, a continuation through July 15 of the shutdown would have left the state facing $211 million in severance costs, including accrued vacation and sick pay, as well as ongoing health and unemployment insurance payouts. Approximately $100 million of that amount, set aside for unemployment benefits, was not budgeted and would ultimately have needed to be made up with cuts to programs in whatever budget was agreed upon.

Minnesota was not the only state to miss a July 1 budget deadline, however it was the only state to have experienced a government shutdown.

Expiring Tax Cuts Will Prove Costly to Extend

The scheduled expiration in 2008 of a number of tax cuts put in place during Bush's first term has many Senate GOP tax writers looking to the budget reconciliation process to extend these costly measures. If included in the $70 billion reconciliation package, these tax provisions would be protected from a Senate filibuster, yet would add billions of dollars to the national debt through 2010, the five year window the reconciliation bill would cover. Many contend that reauthorization of provisions that benefit the wealthy disproportionately and at the expense of middle- and low- income Americans demonstrates our current Congress' misguided priorities with respect to tax policy.

Debate over these provisions has centered around two opposing views of the U.S. economy and federal deficit. So while many believe the federal government is currently flirting with fiscal disaster by eliminating essential revenue in the form of tax cuts while the deficit skyrockets, others maintain that increased revenue coming into the Treasury, as evidenced in the Congressional Budget Office's (CBO) monthly budget review, confirm our economy is sound enough for these tax cuts to be made permanent.

A Joint Committee on Taxation report, titled "Present Law and Background Information in Certain Expiring Tax Provisions," notes that the lowered tax rates on capital gains and dividends -- which are extremely contentious, as they almost exclusively benefit higher-income taxpayers -- would cost $20.55 billion to extend through 2010. Notably, 84 percent of total capital gains are reported by taxpayers earning at least $200,000 per year. Extending this provision, therefore, would benefit the highest earners in society, while adding over $20 billion to a debt that will undoubtedly be paid off in the future by raising taxes on low- and middle-income earners.

Recognizing they lack the 60 Senate votes to overcome Democratic objections, GOP tax writers in the Senate are looking to extend these provisions this fall in the reconciliation process, which is immune to the filibuster. Tax writers must, however, adhere to a $70 billion spending limit set by Congress in the budget resolution in order to ensure the reconciliation bill will be protected from a filibuster in the Senate.

Debate over these expiring provisions, and the likelihood that GOP tax writers will look to extend them through reconciliation, adds to a growing body of proposed tax legislation, including estate tax repeal and alternative minimum tax reform, which eases taxes on the rich at a cost of billions to the rest of the county.

The tax cut provisions were first passed in 2001, when economic projections forecasted a budget surplus of $5 trillion for the coming decade. In 2003, the acceleration of those tax cuts added $500 billion to the deficit over ten years. While most of the tax provisions passed in 2001 will expire at the end of 2010, a handful will expire between 2006 and 2008. Four of those, including capital gains and

dividends tax rates, were the subject of a June 30 Senate Finance Subcommittee on Taxation and IRS Oversight hearing.

Congress may be tempted to provide additional tax breaks for the wealthy in light of expected estimates that the deficit for the current fiscal year, while still substantial, is not as large as once projected. The White House Office of Management and Budget is scheduled to release its midyear assessment on July 13. Last week, the Congressional Budget Office said it expected the annual deficit to be between $325 billion and $350 billion, well below the administration's projected deficit of $427 billion provided last January. OMB's revision is likely to be in the same range as that of the CBO. One reason for the improving deficit picture is the increase in revenue from corporate and individual taxes. This is likely to be used as an argument that the tax breaks are working. However, by all accounts, longer-term estimates regarding deficits remain uncertain, if not bleak.

OMB Watch Wins in Court for Access to Risk Management Data

After almost four years of silence, the Environmental Protection Agency (EPA) released updated information on Risk Management Plans (RMPs) filed by facilities with large quantities of hazardous chemicals onsite, in order to inform communities about the risks. The agency released the information to OMB Watch after the organization sued EPA for failing to respond to its request filed under the Freedom of Information Act (FOIA). OMB Watch has posted the executive summaries of the RMPs on its Right to Know Network website.

Shortly after the 9/11 terrorist attacks the EPA removed the RMP database from its website, replacing it with a message explaining that in light of attacks the database had been "temporarily removed." The message also states that the agency hopes to make the information available online again "as soon as possible." However, after almost four years EPA has not reestablished online access to any of the RMP information.

The RMP Database contains the plans for facilities that store hazardous chemicals, such as chlorine gas, which pose significant risks to nearby communities if released due to accident, natural disaster, or terrorist attack. Facilities submit RMP reports to the EPA explaining their operations, safety equipment, accident prevention and response plans, and an accident history. The RMP information allows the public to make informed decisions about its own safety.

The chemical industry has lobbied hard against public access to this information, seizing on terrorism to justify curtailing public access to information on industry and shirking corporate accountability. Public interest groups have maintained that the RMP information is the first step in identifying and solving any vulnerabilities that exist at chemical plants and in making our communities safer.

Since EPA discontinued public access to the RMP data, the only online resource for this information has been OMB Watch's Right-to-Know Network (RTK NET) website. However, EPA refused OMB Watch's efforts to update the information on RTK NET. The agency refused the organization's 2003 request under the Freedom of Information Act for electronic copies of the RMP executive summaries. The agency's claims for refusing the information, which by law is collected specifically to inform communities about chemical risks, were based on the reports being part of internal agency rules and therefore exempt from public release.

OMB Watch immediately filed an appeal noting the requirement under the Clean Air Act Amendments of 1990 that RMP reports be collected and released to the public and that reading rooms around the country provide access to paper versions of the documents. The appeal also pointed out that under the Electronic Freedom of Information Act Amendments, agencies may not deny requests for electronic format if the information is releasable.

After waiting for almost two years for EPA to respond to the appeal, OMB Watch retained legal counsel and filed a complaint in court. After only 30 days, the agency provided the data without ever filing a counter-argument or offering an explanation for its early refusals.

Last week Congressman Edward Markey (D-MA) released a Congressional Research Service report that utilized the RMP data to demonstrate that chemical security is a nationwide issue. See related story.

The updated executive summaries can be searched and accessed here.

Congressional Report Uncovers Chemical Security Risks Throughout the Country

An analysis prepared for Rep. Edward Markey (D-MA) by the Congressional Research Service (CRS) reveals that chemical plants endanger millions of Americans in every state. The report demonstrates widespread problems with chemical security and highlights the need for a national policy that will reduce these risks.

CRS used information submitted by chemical facilities under the Environmental Protection Agency's (EPA) Risk Management Plan (RMP) program to produce its analysis. The RMP database covers almost 18,000 facilities that use large quantities of toxic and flammable chemicals. (On July 11, OMB Watch made available updated information from the RMP on RTK NET. See related story.) The report reveals that more than 100 facilities place upwards of 1 million people at risk from a chemical release and more than 400 additional 400 facilities place between 100,000 and 1 million people at risk.

The CRS report highlights the need not just for provisions to increase security, but also to reduce risk, at these facilities. Any federal chemicals security legislation should include incentives for using safer chemicals and technologies to reduce the number of people at risk from chemical releases. With so many communities at risk throughout the country, the report also demonstrates the need for public access to information on what is being done to protect communities and how well facilities are performing.

"There are night clubs in New York City that are harder to get into than some of our chemical plants," notes Markey in a release accompanying the report. "These facilities which pose security risks exist in all 50 states. Twenty-three states, including Massachusetts, contain at least one facility at which a worst-case accident or terrorist attack could threaten more than 1 million people."

Markey offered an amendment that included provisions to strengthen security at chemical plants during the April 2005 mark-up of the Department of Homeland Security Authorization Act. However, party-line voting defeated the amendment. Chemical security legislation has faced strong opposition from power chemical industry associations and the Bush administration. However, the administration has recently appears to have reversed its position on chemical security legislation and now supports federal requirements.

"While the Bush administration has claimed to abandon its own earlier approach of allowing the chemical industry to regulate itself," explains Markey, "it has refused to put its money where its mouth is and commit to any meaningful security upgrades."

As of yet, there are no details on the chemical security provisions that the administration supports.

New York Assembly Passes New Environmental "Right to Know" Bill

The New York State Assembly passed the Environmental Community Right to Know Act of 2005 (A. 1952) on June 4. The bill would create a single location online for the public to access and search all environmental information collected by the state on hazardous substances released into the environment.

The New York State Department of Environmental Conservation already collects enormous amounts of data on the release of hazardous materials through permits, pollution monitors, and facility reporting. The bill, introduced by Assemblyman Ryan Scott Karben along with over 30 cosponsors, would require the agency to compile that information and make it searchable online. This new resource would give citizens more complete pollution profiles of companies, industries, and geographic areas.

Currently New York, like most states, has several laws and regulations addressing environmental protection, resulting in many different databases containing information collected in different formats and at different times. Therefore, a state resident would find it nearly impossible to track all types and amounts of pollution produced by a factory in his or her community.

The Environmental Community Right to Know Act of 2005 seeks to overcome this problem by pulling data from different locations and formats into an easily searchable public database. While the bill will not require the collection of any new information, it would provide the public with a new level of access to the environmental information already being collected.

State Senator Charles Fuschillo (8th Senate District) has introduced the bill (S. 1773) to the New York Senate, and lawmakers are hopeful that it will pass before the end of the legislative session.

NIH AIDS Division Director Fired Possible Retaliation for Whistleblowing

Dr. Jonathan Fishbein, a National Institutes of Health (NIH) researcher and director of the AIDS research division's Office of Policy in Clinical Research Operations, blew the whistle on poor scientific practices and inappropriate, unprofessional conduct by the department. NIH fired Fishbein on July 1 citing poor job performance, in what some believe to be retaliation. A review report for the NIH director's office confirms many of the issues that Fishbein raised about the agency's AIDS research division, adding to the speculation that his dismissal constituted a retaliatory action.

Fishbein disclosed that the agency failed to enforce rules regarding good clinical practices in AIDS drug trials in Uganda. He directed his criticism at extensive standards violations by researchers and an attempted cover-up by NIH officials.

An August 2004 report that reviewed the AIDS division, obtained by the Associated Press, supports Fishbein's description of the division. The report calls the department a "troubled organization" and found that its managers have engaged in unnecessary feuding, sexually explicit language and other inappropriate conduct.

Sens. Charles E. Grassley (R-IA) and Max Baucus, (D-MT), the chairman of the Senate Finance Committee and ranking minority member respectively, are questioning Fishbein's dismissal. In a letter dated June 30 to NIH Director Elias A. Zerhouni, Grassley and Baucus demanded an explanation for the firing of Fishbein. The letter also noted that retaliation against an employee for reporting misconduct is "unacceptable, illegal and violates the Whistleblower Protection Act."

Flaws in Delaware's Open Records Law Keep Information out of Public Hands

Illogical exemptions and poor implementation appear to be preventing Delaware's Freedom on Information Act (FOIA) from fulfilling its purpose to provide the public with access to important government-held health and safety information. Delaware's *News Journal* conducted an investigation into the function of the state's open records law and found significant problems and loopholes.

The News Journal recently submitted several FOIA requests to assess the effectiveness of the state law. The newspaper requested air quality data and emission-testing results from power plants; odor-complaint records and monitoring reports from landfills; and waste-management plans from farmers. While the agencies provided thousands of pages of documents in response, most of the response consisted of basic bureaucratic forms, which revealed little about the issues being researched by *The News Journal*. The documents did, however, uncover some serious public health hazards that hint at a broader problem, including shallow pits filled with rotting cow and chicken carcasses that threaten drinking water supplies.

Delaware's FOIA has become riddled with exemptions that withhold documents and close meeting doors to the public. These exemptions include information on concealed-weapons permits, criminal files, and driver's licenses.

Also exempt is information on farm manure and fertilizer management. In 2000, state lawmakers created the Nutrient Management Commission and declared records on these major sources of water pollution off-limits to the public. This exemption now prevents concerned citizens from finding out if the tons of animal waste generated by chicken farms in the state annually represent a threat to their drinking water.

Other problems arise from poor implementation by local and state agencies. One woman, who was

curious about the position of town manager in her area, was inappropriately denied a copy of the contract, which should be publicly available. The Delaware Solid Waste Authority has used a lawsuit between a landfill contractor and the agency as grounds to deny requests about emissions and odors from the landfill. Citizens contend, however, that the lawsuit is about day-to-day operations at the landfill and should not interfere with their right to information about methane and other gases released near their homes.

Other states facing similar problems of excessive loopholes and poor implementation are attempting to strengthen their FOIA laws. For example, Arizona is considering legislation that would create a state funded 'public access counselor' to provide expert advice to citizens and state officials regarding requests for state-held information. Additionally, there are several national bills before Congress that would strengthen federal FOIA law.

CA Nat'l Guard Investigated for Surveillance of Peace Activists

On June 26 the San Jose *Mercury News* published email correspondences between Gov. Arnold Schwarzenegger's press office and senior California National Guard officials that detail surveillance of a Mother's Day peace rally sponsored by three organizations. Separate investigations have been launched by a California state legislator and federal officials, and public reaction has been strongly negative, with comparisons to domestic spying targeted at anti-war and civil rights groups during the Vietnam era.

The extent of the surveillance remains unclear. A National Guard spokesperson said that none of its personnel attended the rally, but that it simply monitored news reports of the event. However, an American Civil Liberties Union (ACLU) spokesperson said, "We fear that the surveillance of the Mothers' Day Parade rally is just the tip of the iceberg..." The Guard unit involved, dubbed the Information Synchronization, Knowledge Management and Intelligence Fusion (ISKMIF) program, was created in 2004 to coordinate anti-terrorist efforts. Its nine personnel have broad authority, with the focus of their work intended to be centered on monitoring the safety of bridges and other public facilities.

According to the *Mercury News*, however, three days before the Mother's Day rally, an aide in Schwarzenegger's press office sent the Guard a notice of the event. The Guard chief of staff then emailed the Major General in charge and Col. Jeff Davis, the officer overseeing the ISKMIF program, writing here is "information you wanted on Sunday's demonstration at the Capitol." The response from Davis read, "Forwarding same to our Intel folks who continue to monitor."

When the story broke a Guard spokesman said the military would be "negligent" not to track anti-war rallies because they could turn into riots, and "who knows who could infiltrate that type of group and try to stir something up?" The groups involved in the rally are well known pacifist organizations- Code Pink, a national peace group; Gold Star Families for Peace, made up of parents of soldiers killed in Iraq; and the Raging Grannies of the Peninsula Area, whose members' average age is 72. Public reaction to the Guard's attempt at justification was understandably negative. Joseph Onek of the Liberty and Security Initiative for the Constitution Project at Georgetown University called it "ludicrous."

Two elected officials announced investigations shortly after the surveillance became known. State Sen. Joseph Dunn (D-Garden Grove), who sits on the budget committee that oversees the Guard's budget, has ordered the Guard to turn over all documents about the ISKMIF unit and all information it has gathered about individuals. The Guard claims it has no information on individuals, and if information exists it will be difficult to obtain, because Davis, who oversaw the program, recently retired and all of his computer files have been erased.

There is also response at the federal level, with Rep. Zoe Lofgren (D-CA), member of the House Homeland Security Committee, planning to question Guard officials about the incident in an upcoming hearing. The U.S. Army Inspector General, the federal National Guard Bureau, and the National Guard legal division are also investigating the surveillance allegations.

The California chapter of the ACLU called on the governor to "take immediate steps" to stop Guard spying on domestic groups, including disbanding the ISKMIF unit or strictly regulating it to prohibit "monitoring and collection of information on individuals and organizations engaged in First

Amendment protected activity." The statement also called for guidelines that make it clear "that protest activity -- including civil disobedience -- is not terrorism." A spokeswoman for the governor said the administration is concerned and is looking into the situation.

Medea Benjamin, co-founder of Code Pink, said the incident will not deter the group from its work, but will make them more wary, more likely to look around for unfamiliar faces at meetings, and less free to organize and brainstorm.

Update on 527 bills

Two campaign finance bills, one that would allow more contributions to political parties and the other to restrict contributions to 527 organizations, are headed for a vote in the House. One bill has implications for charities that wish to make issue advocacy communications that mention federal candidates during election season.

On Wednesday, June 29, the House Administration Committee held a markup of H.R. 513, the 527 Reform Act of 2005. The legislation, which would subject independent 527 organizations to the same restrictions as political parties and campaigns, was voted out of committee on a party-line 5-3 vote without a recommendation for passage.

House Administration Committee Chairman Bob Ney (R-OH), has indicated his preference for H.R. 1316, the 527 Fairness Act (Pence-Wynn), which would allow the political parties to raise more money to compete with independent political groups. He used the hearing to criticize Democratic support of unregulated independent political groups. Democrats have come out against both the 527 Reform Act and the 527 Fairness Act, and Ney is eager to send them both to the floor and force the Democrats to choose between the bills, forcing them to choose between regulating 527 organizations or allowing political parties to raise more money.

An amendment proposed by Rep. Chris Shays (R-CT) would exempt 527 organizations that are engaged entirely in state election activity, even if they conducted get-out-the-vote efforts, as long as those campaigns did not mention federal candidates. The amendment also passed by a party-line 5-3 vote.

The Pence-Wynn bill was sent to the floor earlier this month without the support of any Democrat on the House Administration Committee.

Most worrisome for nonprofits is that the Pence-Wynn bill would allow various types of nonprofit organizations, such as social action groups (501(c)(4)), labor unions (501(c)(5)) and trade associations (501(c)(6)) organizations, to make electioneering communications but does not address 501(c)(3) organizations or unpaid broadcasts. The anomalous situation created by such legislation could result in a ban on broadcasts close to elections for the most nonpartisan of nonprofits, charities, while allowing broadcasts by more partisan groups, such as labor unions and trade associations. This could create a virtual blackout of nonpartisan, non-electoral advocacy communications by nonprofits.

The House is expected to take up the Pence-Wynn bill before the August recess; however, it is unlikely that any campaign finance legislation will emerge from Congress this year. Sen. Majority Leader Bill Frist (R-TN) has said that he does not intend to clear floor time for a 527 bill this session. Additionally, with appropriations bills and one definite Supreme Court nominee confirmation debate, the possibility of a conference committee to resolve the issue seems slim.

FEC Holds Hearing on Regulation of Internet Communications

The Federal Election Commission (FEC) held a two-day public hearing in late June to consider comments on its proposed regulation of Internet communications about federal elections. The testimony focused on the role of bloggers and whether they should be required to post disclaimers notifying readers if they receive funds from a candidate or campaign. OMB Watch's testimony focused on the Internet's importance to civic participation and government accountability and urged a minimal approach to regulation. No date for publication of the final rule has been set.

Many witnesses highlighted the need to protect First Amendment rights on the Internet. Reid Alan Cox of the Center for Individual Freedom said, "The Internet, quite simply, is both the most powerful and the most democratic communications medium the world has ever known." Michael Bassik of the Online Coalition said regulation of the Internet should not be increased based on a "hunch" that corruption may become a problem in the future. Trevor Potter of the Campaign Legal Center said the FEC already regulates some Internet communications and should focus on corporate communications, not those of individuals.

Former FEC Commissioner Karl Sandstrom of the law firm Perkins Coie, LLP, testified on behalf of OMB Watch, calling the Internet an instrument of civic participation. He said proposals to use the FEC's media exemption to leave bloggers unregulated ignore fundamental differences between the traditional press and the Internet. Attempts to categorize bloggers as either media or non-media would be futile, he said. Instead, OMB Watch proposed an exemption for all Internet postings and emails on one's own site, which would "allow people full use of the Internet to engage in politics without fear...", but "would leave unaffected payments made for banner ads or other forms of Internet advertising on other people's websites."

Commissioner Ellen Weintraub probed Sandstrom about the proposal, asking if it would respond to a court order requiring the FEC to reconsider its exemption of Internet communications. Sandstrom said that it would, even if no additional regulation is put in place, since the threshold of regulation should be based on the potential for corruption, not value. Trevor Potter of the Campaign Legal Center, also a former FEC Commissioner, said the OMB Watch proposal addresses the issues in the rulemaking, and rule based on it could still require disclosure of paid advertising on the Internet, and disclaimers on them.

The issue of whether disclaimers should appear on blogs that receive payments from candidates or parties was also debated. FEC Commissioner Bradley Smith noted that traditional media are not required to post such disclaimers. The Online Coalition noted that campaign buttons and other media are not subject to a disclaimer requirement, and it would be inappropriate to impose such a requirement on the Internet. A campaign technology company, ElectionMall Technologies, Inc., has proposed a "Blogger Identity Seal" program that would allow bloggers to voluntarily disclose whether or not they receive funding relating to federal elections. The information would appear as a seal on the blogger's site.

GOP Attempt to Intimidate Religious Leader Highlights Broader Problems with Issue Advocacy in Church

On May 9, the Rev. Lisa Doege, of the First Unitarian Church of South Bend, IN, received a phone call from an Indiana State Representative, who warned her that a church program she had planned might threaten her church's tax-exempt status. Representative Luke Messner (R- Shelbyville) warned Doege against an upcoming program on Social Security, raising once more the issue of the role religious institutions have to play in the public sphere and in issue advocacy.

Social Security has become a hot-button issue in South Bend, even eliciting a visit from President Bush. Republicans have put a great deal of effort into covering up Rep. Chris Chocola's (R-IN) history of vacillating on the phasing out of Social Security. In 2000, he advocated a complete phase-out then subsequently opposed a phase-out. Currently, he favors a partial phase-out.

Doege had planned to hold a program on the evening of May 9 to discuss Social Security with her parishioners. Speaking that evening was Notre Dame Professor Teresa Ghilarducci, a pension policy expert and member of the Pension Benefit Guaranty Corporation advisory board and the Board of Trustees of Indiana Public Employees. Messner, who is executive director of the Indiana Republican

Party, claimed to have placed the call to Doege, because it was his understanding "that Ghilarducci was active in Democratic politics and contributed to the campaign of Joe Donnelly, who ran against Chocola in last year's election." He said that information on the church program had come from Chris Faulkner, Chairman of the St. Joseph County GOP. However, there was no indication that Ghilarducci would speak about any candidate or upcoming election during her talk on Social Security.

Doege was "shaken" by the call, but the event went on as scheduled. "They called for a reason, and maybe that reason was to cut off free speech," she explained.

Messner continues to question the nature of the church's Social Security talk. "I guess the question is whether her (Ghilarducci) speaking is a partisan activity. Some folks in the South Bend community believe it probably was." Messner is erroneously equating advocacy on an issue -- where a church or charity's right to state a point of view is protected by the First Amendment -- with advocacy on elections or the defeat of candidates, which is prohibited for 501(c)(3) organizations.

The controversy brings increased attention to the issue of political partisanship in religious organizations. Under current law, churches and religious organizations are exempt from federal income taxes under Section 510(c)(3) of the tax code. To be eligible for tax-exempt status a 501(c)(3) must not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office," according to the IRS. This is an absolute prohibition, and violation of this regulation can result in a nonprofits loss of its tax-exempt status.

However, churches can address public policy concerns, ranging from abortion, gay rights and gun control to poverty, civil rights and the death penalty. They may support legislation pending in Congress or at the state level, or call for such legislation's defeat. They may also endorse or oppose ballot referenda. The discussion of public issues is a common practice in religious institutions -- and charities -- all over America.

The current prohibition on partisan activity protects the integrity of charitable nonprofits by preventing individuals from using tax-deductible contributions to avoid campaign finance laws. It also prevents individuals from using charitable nonprofit organizations, which by definition are organized for public purposes, to advance their personal partisan political views. This unequivocal provision of federal law has served as a valuable safeguard for the integrity of both religious institutions and the political process.

White House Demands Power to Restructure Government

The White House finally released last week its proposal for legislation that would grant the executive branch wide-ranging powers to restructure government programs and force agencies to plead the case for their very existence every 10 years.

Called the Government Reorganization and Program Performance Improvement Act, the proposal is the latest effort to give the White House sweeping powers to reshape federal programs. Two bills are pending in Congress that, similar to measures in the White House proposal, would establish a commission charged with developing government restructuring proposals, and earlier reports have suggested that Sen. Sam Brownback (R-KA) and Rep. Kevin Brady (R-TX) could be collaborating on a proposal to fuse their interests in restructuring authority and programmatic sunsets. In addition, Rep. Tom Davis (R-VA) has gone on record that giving the White House fast-track reorganization authority would be a priority this term, and current speculation is that he will be a backer of the White House proposal.

About the White House Proposal

There are three working parts of the proposal:

1. results commissions, for restructuring government programs;
2. sunset commissions, forcing agencies to plead the case for their existence every 10 years; and
3. fast-tracking commission decisions in Congress.

Results Commission

The results commission section of the proposal would give the White House the power to empanel one or more results commissions that would be charged with reviewing a White House proposal for restructuring, realigning, and consolidating government programs. The call for a commission would have to be authorized by statute, and the White House would "consult with" the minority and majority leaders of both chambers of Congress when selecting commissioners.

The commission would be free to deviate from the White House's original plan when devising its own suggestions, but only when "such changes are necessary to better accomplish the stated purpose of the President's reorganization proposal." The criteria for results commission review are incredibly broad: program areas in which multiple federal programs have "similar, related, or overlapping responsibilities" under the jurisdiction of multiple executive branch agencies and committees of Congress, and program areas in which reorganization may "improve the overall effectiveness, efficiency, or accountability of Executive Branch operations." The White House's announcement in the FY06 budget submission that this proposal was under development suggested that the results commissions would base their decisions on performance data, of the sort produced by the White House Program Assessment Rating Tool. The two pending bills that would establish similar restructuring commissions do, in fact, explicitly base commission decisions on performance data -- which, as has been discussed elsewhere, amount to politically manipulable rhetoric rather than neutral information.

Under the White House proposal, when a results commission returns its proposal, the White House would then have the option to endorse or reject the commission's proposal. If the White House approves of a result commission proposal to restructure programs, it would then forward the proposal to Congress, where it would be fast-tracked for approval.

Sunset Commission

The proposed sunset commission would be a standing body before which each federal program would be forced to plead the case for its very existence every ten years based on the following criteria:

- cost-effectiveness and achievement of stated purposes or goals;
- the necessity of the program in general , as well as in its current form;
- the existence of duplicates or conflicts with other programs *or the private sector*;
- whether statutory changes would improve program performance; and
- whether the program would benefit, in general, from reorganization in the executive branch.

Programs would automatically expire two years after the White House submitted a sunset commission report to Congress, unless Congress affirmatively reauthorizes the program or stays its demise for an additional two years. Note that the two-year expiration applies whether or not the sunset commission proposal is positive.

The proposal adds that any program "related to enforcing" health, safety, civil rights, or environmental regulations would be excluded from automatic sunsets "unless provision is made for the continued enforcement of those regulations." It does not, however, require that any such "provision... made" for continued enforcement be at the same level of funding or committed resources as the expiring program, and it does not mention programs not related to *enforcement* per se -- such as research programs that close existing data gaps -- that are still vital for sound regulatory policy.

Fast-Track

In both the sunset commission and results commission sections of the White House proposal, there is some provision for fast-tracking decisions through Congress -- be it results commission proposals or the schedule for sunset commissions to review programs.

The fast-track process constrains committee review and floor debate with a tight timeframe. Resolutions of approval of results commission proposals or of the sunset commission's schedule cannot be amended and are not subject to points of order. The final caveat is that the fast-track limitations are considered rules changes, subject to later rules changes as the chambers see fit.

Problems

There is no need for it. Congress already has the power to reorganize government programs when it determines the need to do so. Congress creates the agencies by statute in the first instance, and it revisits their effectiveness and continued existence each year through the budget process. The White House's proposal would usurp power from Congress by entrusting unelected commissions with important decisions about the structure and function of all government services.

The creation of the Department of Homeland Security is a case in point. The White House proposed realigning a number of programs in different cabinet departments into a new cabinet-level department, and Congress followed up in record time, illustrating its ability to move quickly when demonstrated need or political exigencies demand swift action. Congress should nonetheless retain the option to proceed more deliberately when White House proposals would have the effect of weakening public protections or needed services.

It would muzzle Congress when careful discussion is needed most. Decisions about the structure, function, and very existence of government services are too important to be ripped from the representatives who have been democratically elected to make them. Decisions this crucial -- about the government's priorities on issues such as health care, retirement security, environmental protection, and even homeland security and defense -- deserve the full debate and consideration of elected bodies. The proposal gives the White House the power to ram its proposals through Congress and imposes such severe limitations on debate that it would effectively muzzle our elected representatives from speaking on these vital issues.

It would decrease agency effectiveness. Agencies would be forced to draw precious time and resources away from their missions of protecting the public , in order to defend themselves against extinction or being restructured into irrelevance. Agencies would be required to comply with requests from sunset and results commissions for data and any other information the unelected commissions demand -- even information the agencies would have to create or obtain from scratch. The result is agency staff would be forced to divert time, energy, and resources that should be devoted to their congressionally-mandated missions of protecting the public interest. Imposing yet more analytical requirements will induce paralysis by analysis. Meanwhile, key battles that were fought and won in the past over civil rights, human services, and more would have to be fought again and again every 10 years.

It leaves room for bias. Both the sunset and results commission would be exempted from the open government and balance requirements of the Federal Advisory Committee Act. The commissions could therefore be packed with industry lobbyists and representatives from industry-funded anti-regulatory think tanks, and they could conduct their business -- about important issues of the structure and function of government services -- in secrecy. There are provisions in the White House proposal for public hearings and other forms of stakeholder participation, but those provisions are merely optional.

It puts the public interest at risk. The key provision that exempts programs responsible for enforcing public interest regulation from sunsets does not make this proposal any less a threat to the public interest. First, the exemption applies only to sunsets; key agencies are still vulnerable to being restructured into irrelevance. Second, the exemption addresses only programs related to *enforcement* of regulations; it does not address programs within agencies that conduct needed scientific research or that develop new protective standards. Finally, this proposal is only the first of many steps to come. Conservatives have vowed to produce regulatory sunset legislation that would apply to individual regulations, and press reports suggest that planned budget process reforms would sunset entitlement programs such as Medicaid and foster care for abused and neglected children.

Report of Newest U.S. Mad Cow Case Highlights USDA Failures

After seven months of silence, the U.S. Department of Agriculture (USDA) confirmed the second U.S. case of mad cow disease on June 24, highlighting the need for more stringent regulatory protections of the nation's beef supply.

Seven months before the USDA announcement, government scientists ran a test that indicated that a U.S. cow was infected with mad cow disease. The result of this test was never publicly disclosed. According to the *New York Times*,

> The explanation that the Department of Agriculture gave late Friday, when the positive test result came to light, was that there was no bad intention or cover-up, and that the test in question was only experimental.
>
> "The laboratory folks just never mentioned it to anyone higher up," said Ed Loyd, an Agriculture Department spokesman. "They didn't know if it was valid or not, so they didn't report it."

Inadequate Protections

The USDA's failure to promptly confirm and report the newest case underscores the inadequate protections currently in place at USDA to adequately protect the nation's beef supply. Safeguard against mad cow disease include surveillance requirements and direct interventions to prevent the spread of mad cow disease in cattle. The revelation of the second confirmed case of mad cow disease in the U.S. is a stark reminder that both of these elements of the mad cow firewall are insufficient.

Insufficient Surveillance

While Japan tests every cow and Europe tests one in four, the U.S. tests only one in 90. That low number is still an improvement from 2003, when the U.S. tested only 1 in 1,700. In order to fill in this testing gap, USDA relies on statistics.

Further, USDA has been resistant to implement the more stringent "Western blot" test for mad cow disease preferred in Europe. Interestingly, it was not the U.S.'s "gold standard" of mad cow testing, but rather the "Western blot" test performed by a British scientist, that confirmed the most recent case of mad cow disease.

Gaping Loopholes

Still, testing alone does not prevent the spread of mad cow disease but, rather, only monitors its occurrence in the cattle population. The greater threat to the U.S. beef supply lies in USDA's failure to close the significant loopholes that exist in the safeguards designed to prevent the spread of the disease. Despite promises made more than 18 months ago, USDA has yet to close those loopholes.

Mad cow disease is known to be spread through ruminant-to-ruminant feeding -- the rather innocuous term for the practice of feeding cows parts of other cows. Although the USDA banned direct ruminant-to-ruminant feeding in 1998, several loopholes still exist. For instance, cattle can be fed poultry litter that is contaminated with cattle meal; formula that contains cow blood; and even restaurant leftovers that include beef, all of which could transmit the deformed protein (or prion) that causes mad cow disease.

These loopholes have not yet been closed. "Once the cameras were turned off and the media coverage dissipated, then it's been business as usual, no real reform, just keep feeding slaughterhouse waste," John Stauber, an activist and co-author of *Mad Cow USA: Could the Nightmare Happen Here?*, told the Associated Press in June. "The entire U.S. policy is designed to protect the livestock industry's access to slaughterhouse waste as cheap feed."

Pattern of Cover-Ups?

Government inaction on mad cow disease may well stretch back to the early 1990s. Federal

investigators are now probing allegations from a former USDA veterinarian that the USDA covered up concerns over mad cow from the very beginning of USDA's mad cow surveillance program in 1990.

Moreover, the Canadian Broadcasting Corporation (CBC) recently uncovered that the USDA may have mishandled two 1997 tests of suspected mad cow. In one, an independent university lab concluded that the cow "had a rare brain disorder never reported in that breed of cattle either before or since -- not the dreaded [mad cow disease]." CBC discovered, however, that "key areas of the brain where signs of [the disease] would be most noticeable were never tested. The most important samples somehow went missing."

Hearing on Hit List Addresses Larger Regulatory Policy Issues

A House subcommittee hearing on the White House's anti-regulatory hit list became a venue for stakeholders to voice their positions on the broader ongoing debate over public protections and political interference in regulatory policy, pitting corporate-conservative talking points against evidence of the need for stringent safeguards.

The June 28 hearing of the regulatory affairs subcommittee of the House Government Reform Committee was the second to address the White House's hit list of regulatory protections to be weakened or eliminated. This time, the committee focused on regulations targeted by the hit list from the Department of Transportation (DOT) and Department of Labor (DOL), and in particular on two rules important to worker and public safety. The first protects workers from exposure to the carcinogen hexavalent chromium, while the second limits the number of consecutive hours that trucking companies can allow their drivers to work.

In the course of debating the merits of those pending rulemakings and whether they should even be included in a hit list of protections to be rolled back, the committee members and witnesses found themselves engaging in several larger and recurring debates in regulatory policy: transparency and political interference in protective policy; the relationship between regulatory protections and the competitiveness of American companies in a global marketplace; and the diversion of agency resources into navel-gazing analyses instead of action to protect the public.

Specific Rules

Little was learned about either the hours of service rule or the hexavalent chromium rule, because each is still a pending rulemaking about which the agencies were reluctant to divulge anything not already in the administrative record. Nonetheless, discussion of the two rules highlighted the public needs at stake in the White House hit list project.

Hours of Service

Rep. Stephen Lynch (D-MA), subcommittee ranking member, expressed concern that the hit list includes the Federal Motor Carriers Safety Administration's (FMCSA) current rulemaking on the hours truckers are allowed to work in a given time period. Public Citizen previously brought and won a lawsuit against the agency for issuing a rule that actually increased the number of hours truckers could drive consecutively, in the face of overwhelming research that shows a significant degradation in performance after 8 hours on the job. The U.S. Court of Appeals for the District of Columbia Circuit, in a ruling last July, held that the agency violated its statutory mandate by failing to consider the effect on the health of truck drivers and ordered the agency to revise its rules consistent with its opinion.

In the wake of the court decision, the agency rushed to petition Congress to reinstate the overturned rule for one year while it is reconsidered by FMCSA. This temporary measure expires in September.

Lynch expressed outrage that the agency had never considered the health of the driver, much less the safety consequences of having tired drivers operating large trucks on the nation's highways. Joan Claybrook, president of Public Citizen and former head of the National Highway Traffic Safety Administration, added that the White House Office of Management and Budget (OMB) has yet to explain why this rule was added to the hit list, when it is still actively in the rulemaking process in the wake of the federal court's rejection of the rule as an unwarranted rollback of already weak

safeguards.

Hexavalent Chromium

Claybrook testified that the Occupational Safety and Health Administration's (OSHA) hexavalent chromium rulemaking similarly should not be included on the White House hit list, citing near unanimous agreement in the scientific community that the substance is a lung carcinogen. Despite overwhelming evidence of health risks posed by the chemical, OSHA has dragged its feet for years on promulgating a lower permissible exposure limit (PEL). In 2002 Public Citizen sued, and the U.S. Court of Appeals for the Third Circuit ruled that OSHA's years of failing to promulgate a lower standard in the face of well documented and grave public health risks exceeded the bounds of reasonableness.

Industry groups continue to oppose the resulting proposed PEL of 1 microgram per cubic meter via OMB's hit list, citing a small, industry-backed study. Lynch and Claybrook pointed out the methodological superiority of a much larger study that reveals a much greater risk. They also suggested that the PEL could be specially tailored to accommodate two small industry subcategories that would be hardest hit by the costs of the rule, rather than altering a proposed PEL that is already within the reach of most of the affected industries.

Larger Problems

In the course of addressing the specific issues of the hit list's inclusion of hexavalent chromium and hours of service, the hearing addressed larger issues that recur throughout regulatory policy debates.

Lack of Transparency

The hit list is only the latest in a long line of OMB interventions in the regulatory process shrouded in secrecy. In this case, although there was transparency in the process of soliciting nominations for the hit list, it is unclear how the OMB and agencies chose which rules to include on the final hit list. Throughout the hearing, Lynch attempted to shed light on this murky process. Despite diligent questioning and obvious frustration with the process's lack of transparency, Lynch was unable to elicit from witnesses testifying on behalf of either DOL and DOT a clear picture on how the agencies derived the list of rules designated for "reform." DOT General Counsel Jeffrey Rosen even suggested that the final decision was made by OMB itself.

Claybrook testified that the hit list is an unwarranted political intrusion in agency decisions. "There are two fundamental hypocrisies in OMB's interference in agency activities in the form of the 'hit list,'" she said. "One, the nomination and selection process for OMB's hit list lacks the minimum indicia of accountability and transparency that it would reasonably expect of any agency process; and, two, its unwarranted and unauthorized interference in agency and congressional priorities is unsupported by any analysis of the costs and benefits of the regulatory rollback it recommends or of the harm caused by delay in agency issuance of important new rules. The consequence of these two flaws is that OMB's list is intellectually incoherent."

Regulation as Scapegoat

Rep. Candice Miller (R-MI), subcommittee chairperson, repeatedly blamed government and regulation for the ills of the manufacturing sector. Claybrook pointed out that this justification for the assault on regulation might be "convenient lobbying strategy," but "it is far easier to blame the rules than deal with the truth. A wealth of research shows that direct labor costs, such as the wages for comparably skilled workers, are the major driver for industrial decisions to relocate jobs, not regulatory costs, which are less than one percent of the cost of shipped goods." Instead of regulation, the problems of manufacturing may be caused by unfair trade agreements that turn international labor cost differences into a significant problem for domestic industry.

In fact, research suggests that stringent health, safety and environmental protections in industrialized nations may actually *stimulate* growth and competition. In the face of dramatic evidence to the contrary, Miller's remarks at the hearing seemed to suggest that all the U.S. government needs to do is to roll back environmental, health, and safety regulations and the hemorrhaging of U.S. jobs to countries with far cheaper labor costs would stop.

Value of Regulation

Miller and industry witnesses repeatedly equated *older* regulations with *outdated* rules. They repeatedly cited examples of industry consensus standards, which may be written in more contemporary terms than some decades-old regulations but may not necessarily be more stringent than existing regulations. They also stressed their enthusiasm for the hit list project, which industry uses as one-stop shopping for attacking regulation. In addition, they expressed their support for regulatory "sunsets," automatic expiration dates for all rules on the books, even such proven protections as the ban on lead in gasoline. At one point in the hearing, Miller cryptically added that legislation would be introduced soon, although it was unclear if she was referring to codifying industry consensus standards or to mandating regulatory sunsets.

Claybrook offered an alternative view of regulation as "a modern form of the social contract. They embody a fundamentally democratic idea about the exchange of responsibilities among participants in a society."

She also offered five principles that stress the value of regulatory protections:

1. Corporations, like people, should clean up after themselves and be required to prevent foreseeable harm caused by their actions and choices.
2. Government action should correct social and political wrongs; set out fair rules for participation; distribute resources fairly; and preserve and protect shared resources and the public commons.
3. Government activity both reflects and enacts moral values and collective goals—clarifying who we are and what matters to us.
4. People have a responsibility to actively respect the lives and health of people we do not know, as well as the natural environment and its limitations and gifts.
5. Voluntary risks are morally distinct from risks imposed upon the public without their knowledge or consent.

"The principles encapsulate some of what is systematically disregarded by OMB's cynical view of both government and the people whom government protects under the constitutional prescription that it 'promote the general Welfare,'" Claybrook concluded.

These recurring debates will undoubtedly be repeated in the near future as anti-regulatory policy proposals are introduced.

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