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Commentary: The Case for a Strong Estate Tax

On Capitol Hill, there exists a debate about the future of the Bush tax cuts and the federal estate tax. While President Bush's 2001 tax policy eliminated the estate tax for 2010, it is set to return to pre-Bush tax cut levels in 2011 unless Congress intervenes. How Congress chooses to address the estate tax will have significant implications for the federal budget deficit and the fair distribution of the nation's prosperity.

The estate tax is the country's most progressive tax, and it affects only the super-wealthy. In 2009, the first $3.5 million ($7 million for a couple) of a family's wealth was exempt from the estate tax. For amounts over that exemption, the tax rate was 45 percent after first allowing the family to reduce the size of the estate through various means, such as giving money to a charitable cause. Should the tax return at pre-tax cut levels, the exemption will drop to $1 million ($2 million for a couple), and the taxable rate will be higher than in 2009.

Conservatives are pushing to kill the estate tax outright, but the chances of full repeal are low. However, Congress might reach a compromise between repeal advocates and estate tax supporters that severely weakens the tax. Both short- and long-term economic considerations, however, argue for a robust estate tax that brings in vital revenue and prevents an extreme concentration of wealth in the hands of a few.

At the end of 2009, when Congress was debating permanently extending the estate tax, the range of policy solutions within the debate was defined by two proposals. One proposal, sponsored by Sens. Blanche Lincoln (D-AR) and Jon Kyl (R-AZ), which would have raised the exemption level to $5 million for individuals ($10 million for couples) and lowered the taxation rate to 35 percent, would have essentially gutted the estate tax. Compared to current law, the Lincoln-Kyl bill would have reduced revenues by some $500 billion over ten years.

Another proposal, put forward by President Obama in his FY 2011 budget request, would extend the 2009 estate tax rates and index them for inflation. Although the Obama proposal would raise significantly more revenue than the Lincoln-Kyl proposal, it would cost the Treasury about $250 billion over ten years. Congress eventually incorporated the president's proposal into a bill introduced by Rep. Earl Pomeroy (D-ND), which the House adopted before the winter recess. The Senate, however, could not come to an agreement on the bill, and the estate tax disappeared on Jan. 1.

In June, Sens. Bernard Sanders (I-VT), Tom Harkin (D-IA), and Sheldon Whitehouse (D-RI) pushed the spectrum of available policy options slightly to the left by introducing a more progressive estate tax bill. The Responsible Estate Tax Act, which OMB Watch, along with over 70 national and state organizations, recently called on senators to co-sponsor, would keep the 2009 estate tax exemption level of $3.5 million but would institute a more progressive rate structure. The tax rate would range between 45 percent for estates just above the exemption threshold to 65 percent for billionaires.

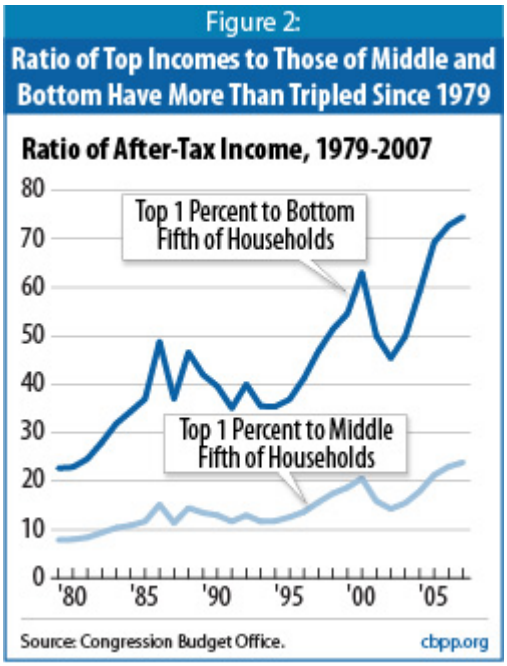
With Washington consumed by fears of high deficits, Congress is scaling back annual budgets when federal programs in education, health, infrastructure, nutrition, and other priorities still lack full investments. A strong, progressive estate tax could help fund these priorities. Conversely, a weak estate tax would only further hinder the government's ability to make important investments in the nation. The White House forecasts that without an estate tax, the government will lose close to $15 billion in 2010 alone.

Beyond the immediate financial needs of the country, though, there is another very important reason to have a robust estate tax: to help break up extreme concentrations of wealth. When the federal government enacted the estate tax in 1916, it did so with the recent memory of the robber barons and with the explicit intention of keeping the country from turning into an oligarchy.

Concerns about the U.S. slipping into an oligarchy are cropping up once more. Sanders, writing in *The Nation*, examined the specifics:

> The 400 richest families in America, who saw their wealth increase by some $400 billion during the Bush years, have now accumulated $1.27 trillion in wealth. Four hundred families! During the last fifteen years, while these enormously rich people became much richer their effective tax rates were slashed almost in half. While the highest-paid 400 Americans had an average income of $345 million in 2007, as a result of Bush tax policy they now pay an effective tax rate of 16.6 percent, the lowest on record.

At the same time, middle- and lower-class families have been decimated by stagnant wages, higher costs for necessities, and an historic loss of wealth due to the financial markets collapse spurred on by the bursting of the housing bubble. These details bear out in research conducted by the Center on Budget and Policy Priorities in June, represented most clearly by this shocking graph:



Much of this is due to the Bush tax cuts of 2001 and 2003 and the associated whittling away of the estate tax.

Beyond preventing an oligarchic concentration of wealth, the estate tax also has implications for addressing unmet needs. For example, a family can make contributions to charity to reduce the taxable size of an estate. This incentive has helped to create foundations and has provided needed resources to charities and churches throughout the United States. These contributions supplement needed revenue at the federal and state levels and provide another key reason why the estate tax is of vital importance to communities across the country.

Without a strong estate tax, which must have a progressive rate structure to capture the wealthiest of the wealthy, this country will continue to slip toward the very few controlling most

of the wealth, undermining the basis of an egalitarian society envisioned by its founders.

Congress' Spending Slump

The month of August is seen as an important time in every Congress because the weeks-long recess breaks up the legislative calendar. As the number of legislative days dwindles, Congress is faced with a slew of spending bills, including a war supplemental bill, a small business jobs bill, and a slow-starting appropriations process. The sheer amount of spending bills that remain on the docket, and the tardiness of these bills, nearly guarantee at least one continuing resolution in the fall.

At the top of Congress' priority list is the war supplemental bill. Both the House and Senate have passed a version of the bill, which provides additional funds to the wars in Iraq and Afghanistan. The House version, passed July 1, is significantly larger; in addition to $59 billion in war spending, it includes $20 billion in assorted other measures, such as $10 billion to prevent teacher layoffs and funding for Pell Grants. On July 22, the Senate rejected the House version and sent back a slimmed-down bill with only the $59 billion in war spending.

In June, Defense Secretary Robert Gates warned that the Defense Department would have to start making "stupid" budget cuts if the bill was not passed before July 4. Now, almost a month later, it is up to the House to decide if it should pass the Senate version as-is, sending the bill to the president to sign, or delay the bill even longer for the chance to include much-needed domestic spending on a must-pass piece of legislation. While it remains to be seen how the House reacts to the Senate bill, the Pentagon is "seriously planning" as if Congress will not pass the bill before the August recess.

As the House debates how to handle the war supplemental, the Senate is dealing with another long-delayed bill, a small business jobs bill passed by the House in June. The legislation, which has been on and off the docket for the past several months, contains $12 billion in tax expenditures and a $30 billion loan program. The loan program is proving to be controversial, with Republican members of the Senate comparing it to the unpopular financial bailout bill, the Troubled Asset Relief Program (TARP). While the lending program survived a cloture vote on July 22, Democratic leaders may still have to drop it in an effort to pass the bill, leaving only the tax cuts, which would necessitate another trip to the House for approval. A vote on the bill has been tentatively scheduled for later in the week of July 26.

Both houses are finding it difficult to pass their yearly appropriations bills on time, an indication of how badly split Congress is, at least when it comes to major spending decisions. Only six appropriations bills have been approved by the full appropriations committees, one in the House and five in the Senate, when in an average year, most, if not all, bills are out of committee by August. The full House usually votes on a great deal of them before leaving town for the August recess. The cause for this delay has been the lack of a budget resolution, which reflects a broader rift within the Democratic Party over appropriate spending levels and the looming

deficit. Since neither house could pass a resolution, the appropriations subcommittees were forced to wait for spending guidelines, which both the House and Senate passed in mid-July.

In what could be a problem in the coming months, the House's allocations are $7 billion higher than the Senate's, largely due to a larger Labor-Health and Human Services-Education appropriations bill. Usually, when Congress passes a budget resolution, the two chambers agree on spending limits, which results in somewhat similar appropriations bills. Without a resolution, the House and Senate may now find it difficult to agree on a final level for the Labor bill. Both houses, though, set spending guidelines lower than the president's budget request from February.

While the small business bill and the war supplemental could be finalized before the recess begins, the appropriations cycle will continue for months to come. With little chance of Congress passing all twelve bills by October 1, Congress will almost certainly be forced to pass a series of continuing resolutions to fund the government. It may also face the prospect of completing the annual appropriations process during a post-election, lame-duck session.

Chemical Security Bills Reduce Risk, but Secrecy Weakens Program

Sen. Frank Lautenberg (D-NJ) has introduced two related chemical facility security bills that would reduce the consequences of a catastrophic accident or terrorist attack at many of the nation's chemical plants and drinking water and wastewater treatment facilities. The legislation addresses many of the issues raised by a coalition of environmental and openness groups, but it fails to provide the accountability and transparency needed to ensure the government's chemical security program would actually make facilities and communities safe.

Lautenberg's legislative package would require facilities to assess available safer technologies that would eliminate the potential for a release of poisonous gases following a disaster. The most dangerous facilities would be required to convert to using the safer technologies – but only if several conditions are met. The bills would also require facilities to involve workers in the formulation of security plans. The package includes S. 3598, the Secure Water Facilities Act, which deals with water facilities, and S. 3599, the Secure Chemical Facilities Act, which covers chemical plants.

The bills build on compromise legislation that the House passed in November 2009, incorporating a number of valuable provisions to drive conversions to safer chemicals and processes, protect workers, and expand the number of covered facilities. However, like the House legislation, the Senate package allows the government to conceal basic regulatory data that the public needs to hold agencies and companies accountable and to ensure the program is working as well as it should.

The Lautenberg bills are competing with another, weaker bill. Sen. Susan Collins (R-ME) introduced a bipartisan bill earlier in 2010 that would simply extend for five years the existing,

temporary chemical security program housed at the Department of Homeland Security (DHS). The Collins bill would continue to exempt from the program thousands of chemical and port facilities, including approximately 2,400 water treatment facilities and 400-600 port facilities. Moreover, critics point out that the current program, known as the Chemical Facility Anti-Terrorism Standards (CFATS), prohibits DHS from requiring any specific security measure, including the use of safer and more secure chemical processes that can eliminate catastrophic hazards posed by poison gas. CFATS also operates under such excessive secrecy that the public is unable to evaluate if the program is working and cannot hold the government or facilities accountable.

The new bills from Lautenberg would rectify many of the fatal flaws in the current CFATS program. The bills would also make some progress in wrenching crucial information from the government. However, key information would continue to be vulnerable to the excessive secrecy that now weakens CFATS.

Accountability and Chemical Security

The Senate bills allow the secretary of DHS and the administrator of the EPA (in the case of water facilities) to consider information created under the program as "protected information." Open government advocates readily agree that certain information, namely the security vulnerability assessments and site security plans, should not be disclosed to the general public. However, the bills allow the agencies to broadly apply the information protections, including to basic regulatory information such as the identities of covered facilities and their compliance status. Government inspection histories and information on violations and penalties at specific facilities could also be concealed. Should DHS and EPA withhold these records, the lack of compliance information would create an immense barrier to public accountability. Some degree of transparency is necessary to ensure the effectiveness of the government program and to assure communities that nearby plants are safe.

The legislation includes another troubling provision that would further restrict the public's access to vital information. Criminal penalties of up to one year in prison, fines, and, for federal employees, dismissal from their jobs await those who disclose sensitive information. The threat of such punishments has a chilling effect on the sharing of information that may or may not be considered sensitive, even with those who need the information the most, such as first responders. The risk of jail time also puts an even greater burden on life-saving whistleblowers who seek to expose negligence in the program's implementation.

Contrary to widespread assumptions, secrecy often interferes with security by reducing accountability, reducing the efficiency of security measures, and slowing or denying release of information to those who protect public safety. Excessive secrecy can delay needed actions by creating the false impression that an issue is being dealt with; the reality is that secrecy robs people of the tools to drive positive change and ensure needed fixes are implemented.

Good government groups have long held that basic regulatory data, technical information on safer and more secure chemicals and processes, and criteria for evaluating facilities should be

actively reported to the public. Such reporting would, among other benefits, generate solutions and improve people's ability to identify and remedy weaknesses in the program and at specific facilities.

Accountability Improvements

Transparency provisions are not completely missing in the Lautenberg bills. The package includes one tool crucial to government accountability: citizen suits against the government. Sensitive information would be protected from unauthorized disclosure in a judicial or administrative proceeding by the use of a protective order from the overseeing judge, background checks for legal counsel seeking access to the information, and guidance on the proper safeguarding of the information, among other restrictions.

Like the House bill, a provision to allow lawsuits against companies for alleged violations was omitted in favor of a "citizen petition" provision that lets individuals petition the government to respond to alleged violations at a facility. However, without basic information such as what facilities are covered by the program or what their compliance status is, the public is hamstrung in its application of the petition process – or any other effort toward accountability.

Other valuable features include a provision requiring an annual report to Congress providing a general overview of the level of compliance with the law, the number of facilities moving into higher or lower "tiers" of risk, and descriptions of the technologies being implemented to reduce the consequences of a terrorist attack. An emergency response capacity study is required to assess what emergency resources would be required to respond to a worst-case disaster scenario at a chemical facility.

The legislation provides for a notification system by which any member of the public may report to DHS a suspected violation or other security problem at a chemical facility. If the person submitting the report requests a response, the agency is required to respond with a description of the agency's findings and any compliance action taken. The Office of the Inspector General must report annually to Congress on the disposition of these reports.

The Road Forward

The current CFATS program expires on Oct. 4, but the prospects for any chemical security legislation moving out of the Senate are uncertain. Collins' bill has bipartisan support in the Senate Homeland Security and Governmental Affairs Committee, but the chemical industry is fighting the Lautenberg bills.

The Senate Energy and Public Works Committee will hold a hearing on the Secure Water Facilities Act on July 28 – right after the homeland security committee marks up and votes on chemical facility legislation. However, there is little time available on the legislative calendar before the midterm elections, making it unclear whether chemical security legislation in any form will see a floor vote in the Senate before November.

Alaska Court Stops All Oil and Gas Activities in Chukchi Sea

On July 21, a federal district court judge in Alaska issued an order halting all oil and gas activities in more than 29 million acres of the Chukchi Sea. The order said that the former Minerals Management Service (MMS) failed to adequately consider the environmental impacts of potential natural gas production in violation of the National Environmental Policy Act (NEPA).

The order was issued by Judge Ralph Beistline of the U.S. District Court for the District of Alaska and effectively blocks oil and gas exploration activity in Lease Sale 193, which brought in $2.66 billion in February 2008. The bid was a record high for an Alaska lease sale, according to a July 23 BNA article (subscription required).

The January 2008 lawsuit to block the sale of the lease was brought by Earthjustice on behalf of the Native Village of Point Hope, City of Point Hope, Inupiat Community of the Arctic Slope, and 12 Alaska and national environmental groups, according to a July 21 joint press release.

Earthjustice claimed that the decision to offer the lease violated NEPA, the Endangered Species Act, and the Administrative Procedure Act. The suit also alleged that the final environmental impact statement filed by MMS (now the Bureau of Ocean Energy Management, Regulation and Enforcement in the Department of Interior (DOI)) lacked essential information, inadequately assessed environmental and human impacts, understated the risks of oil spills, provided misleading information on the effects of seismic activity, and failed to completely assess the dangers to endangered eiders' habitat. (An eider is a type of large sea duck.)

DOI claimed that the environmental impact statement (EIS) contained the scientific results of years of study and analyses of cumulative effects on eiders, as well as incorporating information from the two EIS's conducted for the agencies five-year leasing plans.

The court found, first, that MMS did meet the necessary requirements regarding the analysis of the seismic surveying and its mitigating impacts in the final EIS. Second, the court said that the EIS did not include the necessary analysis of the impacts of natural gas exploration. In light of the incentives in the lease for natural gas production, the agency could not have taken "a 'hard look' at the impact of natural gas exploration if natural gas development is omitted entirely from the EIS." The government had argued that omitting the assessment of natural gas production was reasonable because there is not an infrastructure to bring natural gas to the marketplace.

Third, the court noted that NEPA places very specific obligations on agencies when there is incomplete or unavailable information. The EIS contains "dozens if not hundreds of entries indicating a lack of information" about the impacts on various species, according to the order. Earthjustice had argued that MMS had failed to meet the specific obligations under federal regulations to deal with the missing or incomplete information. The court agreed.

Earthjustice had urged the court to invalidate the lease sale or, barring that, sought "an injunction prohibiting further activity under the leases pending completion of the Agency's

NEPA obligations." The order does not set aside the lease sale; it orders the agency to complete its EIS obligations and halts all oil and gas activity until the agency meets those obligations.

In its July 21 press release, Earthjustice attorney Eric Grafe was quoted saying, "This is an important decision directing the Secretary to consider the need for more information on the Chukchi Sea. We have long argued that more science, more data and more research is needed in the sensitive waters of the Arctic Ocean before oil and gas lease sales or drilling are allowed occur."

A July 22 article in the *Anchorage Daily News* reported that a spokesperson for Shell Alaska, one of the oil companies that was successful in obtaining leasing rights, said the company was reviewing the ruling and how it might affect the company's plans in 2010 and 2011. The newspaper also reported that native groups contend that "it would be impossible to clean up a spill in Arctic waters, far from deep-water ports and airports, especially during periods of broken ice. The nearest Coast Guard base is on Kodiak Island more than 1,000 miles away."

President Obama's initial May 28 six-month deepwater oil drilling moratorium halted much of the oil and gas activity in both the Gulf of Mexico and the Pacific region, including plans Shell had for drilling in Alaska waters. That moratorium was overturned, but Interior Secretary Ken Salazar issued a new drilling suspension on July 12 to address many of the concerns that prompted a district court to grant the injunction against the original moratorium. The new moratorium has also been challenged in court.

National Mining Association Sues EPA over Limits on Mountaintop Mining

The National Mining Association (NMA) filed a lawsuit on July 20 against the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) claiming that new enforcement guidelines issued by EPA in April unlawfully obstruct permitting of coal mining operations. NMA claims the new guidelines effectively prohibit certain types of surface mining and that EPA denied NMA the opportunity to review and comment on the guidelines before they became final.

The lawsuit arises out of the controversial practice of mountaintop removal mining, which involves blasting off the tops of mountains to access coal seams hidden below. After the coal has been mined, the leftover waste is discarded in the surrounding valleys. EPA issued the new guidance after extensive scientific research showed that this "valley fill" method causes pollution in downstream drinking water sources and endangers the health and safety of surrounding communities.

The guidelines are part of an effort to undo a Bush administration "midnight regulation" that allowed mining companies to dump waste from mountaintop mining into rivers and streams. EPA Administrator Lisa Jackson made reducing the harm caused by this rule a top priority, especially after the late Sen. Robert Byrd (D-WV) urged EPA to crack down on unsafe mining

practices. Byrd, an unlikely critic of mountaintop mining due to his coal country constituency, explained in a Dec. 3, 2009, commentary that mountaintop mining led to job loss and unknown effects on the health of surrounding communities. Byrd also defended EPA's regulatory actions and called for a safer alternative to mountaintop mining, stating that "the greatest threats to the future of coal do not come from possible constraints on mountaintop removal mining or other environmental regulations, but rather from rigid mindsets, depleting coal reserves, and the declining demand for coal as more power plants begin shifting to biomass and natural gas as a way to reduce emissions."

The new guidance requires greater scrutiny in evaluating Clean Water Act (CWA) permits for valley fill operations, which has led to many of the permits being denied or held up for review. Although EPA does not claim to be issuing a ban on all valley fills, the guidance states that "generally, it will be easier for projects with no or few valley fills to demonstrate that they comply with the requirements of the CWA and the 404(b)(1) Guidelines. Conversely, projects with multiple valley fills will generally raise serious questions about their compliance with CWA requirements and may require permit objection under 402 or elevation and possible veto under 404." Although EPA describes the guidelines as clarifying how CWA requirements apply to valley fills, and not as creating any new policy or rule, Jackson explained in the April 1 press conference announcing the guidelines that the standard was so strict that few, if any, valley fill permits would be issued.

NMA's lawsuit calls this heightened scrutiny a "de facto moratorium" on permitting for valley fill coal mining. NMA claims EPA and the Corps purposefully circumvented standard rulemaking procedures by issuing the new policy as a "guideline," thus avoiding the long notice and comment period required by federal law whenever an agency creates a rule. NMA also argues that the guidelines violate the CWA by allowing EPA to control the permit review process for valley fills. The authority to issue permits for the discharge of dredged and fill material under the CWA is traditionally delegated to the Corps.

However, EPA's guidance summary states that the CWA gives EPA authority to deny a permit for discharge of dredged or fill material if it would cause or contribute to significant degradation of state or federal water quality. EPA's scientific findings show that valley fills have a substantial impact on both aquatic life and surface waters that feed into public drinking water. The summary cites two federal studies that found that waters downstream of valley fills show elevated levels of highly toxic and bioaccumulative selenium, and that nine out of ten streams downstream of valley fills show significant impacts to aquatic life. Such degradation to water quality could lead to significant impacts on the health of surrounding communities, warranting EPA review under the CWA.

In June 2009, EPA and the Corps entered into a Memorandum of Understanding (MOU), which established enhanced coordination procedures between the two agencies. The MOU allows EPA to conduct additional review with veto power over all permitting actions made by the Corps in regard to valley fills. EPA has stated that it properly entered into the MOU under its authority to issue guidelines to ensure that permitting decisions made by the Corps are in compliance with CWA.

Jackson has repeatedly stated that the guidelines are one step in a long process toward reducing coal mining pollution. EPA's main goal in issuing the guidance is to make an immediate impact in the quality of streams used for drinking water, fishing, and swimming. "Coal communities should not have to sacrifice their environment, or their health, or their economic future to mountaintop mining," Jackson said in the April 1 press conference. "They deserve the full protection of our Clean Water laws."

The National Mining Association filed its lawsuit in the U.S. District Court for the District of Columbia. Neither EPA nor the Corps has issued comments or a response to the lawsuit at this time.

FEC Approves Advisory Opinions for Independent Expenditure Committees

The Federal Election Commission (FEC) recently voted 5-1 to approve advisory opinions allowing two political organizations to collect unlimited contributions for independent expenditures in federal campaigns. The groups, the conservative Club for Growth (the Club) and pro-Democratic Commonsense Ten, will disclose their donors and spending to the FEC. The opinions provide some guidance to entities that wish to raise and spend unlimited amounts of money to run ads supporting or opposing candidates for federal office.

In May, the Club filed an advisory opinion request asking the FEC to rule on the group's plans to establish a new political committee that will only make independent expenditures, without coordinating with campaigns, political parties, or other outside groups. The group asked the FEC whether the Club may solicit unlimited donations from the public to finance such expenditures. Specifically, the Club's request said, "There is a new, constitutionally-mandated entity that, although registering and reporting as a political committee, is protected by the First Amendment from contribution limits and other substantive campaign finance restrictions. This new entity is the independent expenditure-only political committee."

Commonsense Ten also noted that it will only make independent expenditures and seeks to raise unlimited money from unions, corporations, and individuals.

These new independent expenditure committees are the result of recent court decisions. The U.S. Supreme Court ruling in *Citizens United v. Federal Election Commission* lifted the ban on corporate and union campaign spending. In addition, decisions by the U.S. Court of Appeals for the DC Circuit in *SpeechNow.org v. FEC* and *EMILY'S List v. FEC* established that groups sponsoring independent campaign advocacy can collect unlimited contributions from their supporters. Despite providing greater freedom for campaign spending, the court decisions rejected challenges to FEC disclosure rules.

Taking advantage of the rulings, the groups wanted the FEC's permission to accept unlimited contributions, promising to only use the money for broadcast messages supporting or opposing federal candidates. Subsequently, the FEC concluded on July 22 that the independent

expenditure committees "may solicit and accept unlimited contributions from individuals, political committees, corporations, and labor organizations."

The approved advisory opinions directly extend the reasoning of the court decisions in *Citizens United*, *SpeechNow.org*, and *EMILY's List*. The Commonsense Ten advisory opinion states, "Given the holdings in *Citizens United* and *SpeechNow*, that 'independent expenditures do not lead to, or create the appearance of, quid pro quo corruption,' the Commission concludes that there is no basis to limit the amount of contributions to the Committee from individuals, political committees, corporations and labor organizations."

The groups' requests also asked for guidance on reporting requirements. The court decisions upheld disclosure requirements but did not detail how reporting requirements would apply to activities that were previously illegal. The FEC rulings notify the organizations that they can use the current registration and reporting forms for political action committees to provide disclosure on their financial activity.

The FEC also provides a template for the suggested text of a letter committees may use to clarify plans to accept unlimited contributions for making independent expenditures. The applicant organization would state in the letter that it "intends to raise funds in unlimited amounts" but to use the money solely for independent expenditures.

Democratic commissioner Steven Walther voted against the advisory opinions and issued a statement that the FEC went beyond the legal issues settled by the courts. He wrote that "the landscape of federal campaign finance regulation has undergone a paradigmatic shift," and the commission should instead engage in a full rulemaking process to implement the court decisions rather than create individual, case-by-case opinions.

Walther also wrote a separate draft opinion in response to the Club's request, questioning whether the independence of the committee's spending will be compromised. The Club plans to have its president, who serves as treasurer of the Club for Growth PAC, also serve as treasurer of the new independent expenditure committee. However, the agreed-upon opinion accepted the Club's proposal that its new committee will not coordinate its activities with the PAC.

These advisory opinions provide some of the first guidance following the recent string of court decisions on campaign finance law. After announcing plans in April to issue a series of rulemakings, the FEC has failed to draft any new rules or adopt significant new policies. Former Democratic FEC Commissioner Robert Lenhard submitted comments during the advisory opinion process and said the opinion requests were "an opportunity to provide a clear workable system for the exercise of rights enunciated" by the court rulings.

However, the approved advisory opinions do not have the weight of formal regulations or of a law passed by Congress. Further, the opinions do not necessarily mean that it will be clear where all groups airing ads are getting their money. It seems to be up to the individual organization to follow the disclosure regime laid forth in the opinions. The FEC should clarify which groups need to register and report fundraising and spending information.

Legislation currently before Congress, known as the DISCLOSE Act, would address some of these disclosure concerns by setting up a new disclosure system for organizations spending money to influence federal campaigns. The measure passed the House in late June; it faces a procedural vote on July 27 in the Senate, though at press time, its fate remained unclear.

The two FEC advisory opinion rulings, any additional work by the FEC in the next couple of months, and Congress's action or lack thereof on the DISCLOSE Act are all expected to greatly impact the upcoming 2010 congressional elections. Independent groups will be raising and spending money without restraint, while the candidates and the national political parties must continue to operate within limits. As a result, outside groups could play a major role in this year's campaigns.