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Court Blocks Bush Appointment to Civil Rights Commission

A U.S. District judge ruled on Monday, February 4 that the Commission on Civil Rights had no vacancy to fill and thereby blocked Bush's appointment of a replacement for Commission Chairwoman Mary Frances Berry. The Justice Department has indicated that it will appeal the ruling. For more on the Commission and Bush's appointment, see this Washington Post article.

SSA Evaluates Financial Impact of Bush Commission's Recommendations

On January 31, the Social Security Administration's Chief Actuary released its analysis of the financial impact of the Bush Commission's recommendations for the privatization of Social Security. For more on the significance of the recommendations and the SSA's analysis, see the Campaign for America's Future.

The Bush Budget: Reagan Redux

OMB Watch will continue to analyze the President's FY 2003 Budget. Please see the OMB Watch website over the next week for further analyses of homeland security spending, cuts to human needs spending, and spending increases on future tax cuts. The President's Budget is now online. The Washington Post has provided an agency-by-agency overview of the President's proposed spending increases and cuts.

Okay... we've been here before. The President proposes massive increases in military spending, slashes domestic spending, and cuts taxes. The result: a massive build-up in deficit spending, a large portion of government spending going towards interest payments on a ballooning debt, and gaps in the social safety net of the country. While that is a picture from the Reagan years, it is also a snapshot that can be gleaned from the Bush budget sent to Congress today.

The Bush budget, the first completely developed by his administration, proposes yet more tax cuts, coupled with increased spending for military and homeland security – and all of it paid for by huge cuts in domestic programs (cuts that are unlikely to be supported by Congress) and increased deficits. The $2.13 trillion FY 2003 budget proposes a 3.7% increase in spending over this year. Defense spending gets a whopping $48 billion increase, an increase that is larger than the military budget of any other country, according to an analysis by the Center for Arms Control and Non-Proliferation. Homeland security would double to $37.7 billion, with $11 billion over two years going to address biological terrorism. The general feeling is that Congress will agree to the military and homeland security proposals.

But lots of other domestic programs strongly supported by members of Congress would be eliminated and significantly cut according to the Bush budget. For example, Bush proposes the elimination of hundreds of "earmarked" projects that members of Congress insert each year for their home districts. These are not likely to be eliminated in any given year, but especially not in an election year such as this one. Bush also proposes large cuts to highway and environmental programs. For example, he would take a $9 billion slice out of highway spending and reduce spending on water projects undertaken by the Army Corps of Engineers. Few of these cuts in domestic spending will be popular.

Last summer the President got away with a massive $1.35 trillion tax cut targeted to the wealthy mostly because of what appeared to be a large surplus. Most of the tax cuts are phased in over a 10-year period and have not yet been implemented. Because of budget rules, last summer's tax cuts "sunset," or expire, at the end of 2010. With the need for increased spending to respond to terrorism and the economic downturn, it would make sense to suspend the tax cuts that have not been phased in. Yet, Bush proposes to extend these tax cuts by two more years, going until 2012, at a cost of $344 billion. He also proposes an additional $247 billion in tax cuts that include:

- Tax relief for corporations;
- Even greater breaks for wealthy individuals than last summer's tax cut; and
- A tax credit that will pay as much as $2,500 a year in private school tuition for children whose public schools are operating below state standards.

Rosy Scenario Pays Another Visit

During the Reagan years, OMB used economic assumptions and proposals that were highly unlikely in order to present an optimistic budget picture. Bush plays the same trick. For example, in order to demonstrate the need for an economic stimulus that places a heavy emphasis on tax cuts, the budget assumes very low economic growth this year. But suddenly, the economy will explode with the annual rate of growth of the Gross Domestic Product (GDP) jumping from 0.7% in 2002 to 3.8% in 2003. (By way of comparison, the "Blue Chip Consensus" estimates that the rate of growth of GDP will be 1.0% in 2002 and 3.4% in 2003.)

Similarly, the President assumes there will be $1.2 billion in revenue generated from drilling in the Arctic National Wildlife Refuge (ANWR), a controversial proposal that would need to be passed by Congress. There are also spending assumptions that are unlikely. For example, the President has said he supports prescription drugs for Medicare recipients. But he estimates the cost at only $190 billion over the next 10 years, whereas most experts put the cost much higher.

The result is the same as the Reagan budgets that predicted, year after year, smaller deficits – even surpluses -- when in reality the deficit bulged. Like Reagan, Bush's rosy picture will never happen.

Bush Deficits -- FY 2002 - 2004
(in Billions of Dollars)

Fiscal Year	2002	2003	2004
Total Deficit	-$106	-$80	-$14

Whatever It Takes!

Wouldn't it be great if we could resolve to do whatever it takes so that everyone who works can afford shelter and food, or to clean up the nation's water and air, or make sure no child goes to bed hungry -- just as we've resolved to do whatever it takes to fight the war on terrorism?

The President said in his State of the Union address that the price of freedom and security is never too high, and the United States will pay whatever it takes. His budget reflects the costs of increased spending for security against terrorists. It provides the largest increase in military spending in twenty years -- since Ronald Reagan's Cold War defense build up, as well as increased funding for "homeland" security, which primarily includes defending against bioterrorism, protecting our borders from terrorist incursions, insuring that firefighters, the police, and emergency workers are prepared, and improving information sharing and technology. As a nation, we face new challenges to our peace and security and new claims on our resources after September 11. But what does it take to be truly free and secure, beyond protection from terrorists? And how do we pay for it? The President answers that we will simply take money away from "wasteful" domestic programs to provide the necessary resources to the war against terrorism. According to the President, then "whatever it costs" involves no sacrifice at all.

Actually, though, there are costs, and those who are less likely to complain or have their complaints heard are the ones who will pay the price. While the President sounds like he is concerned with giving resources to people in need -- to extend unemployment benefits and health insurance coverage for the unemployed, improve education and pre-school, provide prescription drug coverage to seniors -- he is really just offering up a few very limited tokens while simultaneously proposing that the budget for discretionary programs (almost all that government does outside of entitlements like Social Security and Medicare) be increased by only 2%, barely enough to keep up with inflation.

In other words, the cost of insuring the "ordinary" peace and security of working families and the communities in which they live is too high a price to pay. We aren't willing to meet the basic needs of all of our citizens, make sure no child is hungry, protect the environment, or insure jobs and job training to every worker, whatever the cost. Wouldn't it be great if we could resolve to do whatever it takes so that everyone who works can afford shelter and food, or to clean up the nation's water and air, or make sure no child goes to bed hungry?

The really hard thing about this is that there is a simple way out of the conundrum. In May 2001, the President signed into law the largest tax cut since President Reagan's tax cuts, at a cost of almost $1.4 trillion over ten years. If we'd simply delay implementation of the tax cuts we'd have the resources for a homeland security that includes not only protection from terrorists, but safe and livable communities and what we need to be productive individuals and healthy families. If future tax cuts were frozen beginning with the cuts scheduled for 2003, we could save close to $500 billion. (See Citizen's for Tax Justice's analysis).

This would also require a sacrifice. Who would pay the cost? The wealthiest 1% percent of the country who would have received 84% of the benefits of the fully phased in tax cut if it were frozen after 2002. Their sacrifice would not be nearly as painful as not being able to get health care for your child because of cuts to the Child Health Insurance Program or being unable to support your family because of cuts in job training programs or drilling in wilderness areas to create revenue. But that's not how the President sees it -- he proposes to permanently extend the tax cuts that were due to expire in 2011. Not only are there no costs to be paid -- we can afford more tax cuts. But many actually do pay.

Table: FY 2002-03 Percentage Growth in Discretionary Budget Authority

Note: Many of the increases noted in the table below are due to programs specifically concerned with the President's $37.7 billion Homeland Security budget. For a more-detailed analysis of the components of the Homeland Security and other agency budgets, please see the OMB Watch website for other analyses.

Agency	Percentage Growth
Agriculture	0.5 or less
Commerce	0.5 or less
Defense	12
Education	1
Energy	5
Health & Human Services	9
Housing & Urban Development	7
Interior	0.5 or less
State & International Assistance Programs	4
Justice	-1
Labor	-7
Transportation	19
Treasury	5
Veterans Affairs	7
Corps of Engineers	-10
EPA Operating Program	2
FEMA	114
NASA	1
National Science Foundation	5
Small Business Administration	2
Social Security Administration	5
Smithsonian	6

Source:Table S-6, Summary Tables, *Fiscal Year 2003 Budget of the U.S. Government*

Amendment To Permanently Repeal Estate Tax

Demise of economic stimulus package brings end to efforts to make estate tax repeal permanent -- for now, at least.

Debate on Sen. Tom Daschle's (D-SD) proposed economic stimulus package came close to a standstill last week, as Senators proposed more than 50 amendments to H.R. 622, an adoption credit bill that is serving as the legislative base for this second attempt at economic stimulus legislation. Among the more alarming amendments was one offered by Sen. Jon Kyl (R-AZ) to make repeal of the estate tax permanent.

You'll recall that, as part of the overall Bush tax cuts enacted last summer, the estate tax was slowly phased out over a ten-year period, expiring in 2010. Because of cost considerations the entire tax cut law "sunsets" in 2011, which means that the estate tax, after being repealed for one year in 2010, will be reinstated in 2011. Kyl's amendment, S.A. 2758, would make estate tax repeal permanent by repealing the sunset at the end of 2010.

Permanent repeal of the estate tax has nothing to do with expediting an economic recovery -- any effect of an extension of estate tax repeal would not be felt until 2011, many years after most economists predict the economy will have made a full recovery. Nevertheless, Kyl and many others in Congress have made estate tax repeal a top priority, and many assume that even if the amendment is unsuccessful this time, they will try to bring it up again later this Spring. Adding to the likelihood of another attempt is the strong support of President Bush. In his FY 2003 Budget released today (see related story, this issue), he proposes a permanent extension of all of last year's tax cuts -- including repeal of the estate tax, which alone would cost $104 billion over the years 2003-12.

It seems likely that this amendment will be voted on this week -- perhaps as early as Tuesday, February 5 -- and it is important that we continue to remind our Senators of the significance of the estate tax to our country's well-being. The estate tax helps to provide federal and state revenues for needed programs and services, reduce concentrations of wealth, and encourage charitable giving. Now, more than ever, permanent repeal of the estate tax would be the wrong step for the country:

- In the President's State of the Union speech, he reminded us of the need to reexamine our priorities and allocate our resources accordingly. Surely, with increased spending to strengthen our nation's military, public health systems, air transportation security, national borders, education, and with the pressing financial and health needs of America's families, we cannot afford to give further tax breaks to the country's wealthiest estates.
- All but 6 states face budget deficits this year and because almost every state has a balanced budget requirement, they are now looking for areas to make up their billion-dollar shortfalls. It would be counter-productive for Congress to help alleviate the state fiscal crisis with an increase in Medicaid-matching rates, while it does nothing to remedy the loss of revenue states must endure with the repeal of the estate tax (49 states get revenue from the federal estate tax in the form of a "pick-up tax," or credit).
- Finally, the Senate is currently trying to construct legislation that will help to both expedite the recovery of the economy and bridge the gap for people and the states until the recovery reaches them -- and also allow enough funds to begin meeting the many other needs of the country. Permanent repeal of the estate tax will meet neither of these aims, is very costly and, thus, does not belong in an economic stimulus package.

Again, we urge you to contact your Senators to tell them to oppose the Kyl amendment (#2758) to the economic stimulus bill or any amendment to permanently repeal the estate tax. You may use the OMB Watch contact service to email your Senators or to obtain the numbers to call or fax your Senators directly.

For more information on the role of the estate tax in the nation's charitable giving, see the National Committee for Responsive Philanthropy and the Forum of RAGS.

The Role of Government Performance in the FY 2003 Budget

As we have said before, if improving government performance is limited to threatening agencies with cuts, rather than working together with Congress and the Administration to truly make government more effective and useful to citizens, we can't expect much good to come from this new attempt at improving government.

Much of President Bush's budget rests on the idea that he will achieve huge savings by trimming government waste -- primarily by curtailing unsuccessful programs -- and his 2003 budget emphasizes government performance and results. The President bases this on a simple formula -- if "objective" measures show that a program is succeeding, it will get resources, but, if not, the program needs to be "reinvented, redirected, or retired." Little is said about the difficulties of performance measurement, for instance, how hard it is to measure outcomes over the long-term, or how tempting it is to set goals that can be met rather than ambitious and useful goals, or about whether a good, well-conceived program may not be succeeding because of a lack of resources. We think there is a difference between efficiency and effectiveness and between what government does and what the market can do. The President's emphasis leans more towards efficiency and market-based solutions.

The budget contains "scorecards," rating each agency with red, yellow or green dots --red being the worst, green being the best, and yellow being a middle score. Agencies are "graded" on five criteria:

- Human capital - developing the strategies to attract and retain "the right people, in the right places, at the right time" and make high performance a "way of life in the federal service."
- Competitive sourcing - creating a "market-based" government with market-based competition.
- Financial management -- improving each agency's bookkeeping as well as tracking down overpayments and errors in benefit and assistance payments.
- Expanded e-government.
- Budget Performance integration -- making sure that "dollars will go to programs that work; those programs that don't work will be reformed, constrained, or face closure." Further, as measurement techniques improve, those programs that yield the best bang for the buck will get the most bucks.

The current "baseline" scorecards are covered with mostly red dots, a few yellow dots, and only one green dot, for financial management at the National Science Foundation. The text makes clear that the poor scores represent the government that the President "inherited," and that he has a commitment to eliminating and reducing programs that don't produce. As we have said before, if improving government performance is limited to threatening agencies with cuts, rather than working together with Congress and the Administration to truly make government more effective and useful to citizens, we can't expect much good to come from this new attempt at improving government.

GAO Prepares to Sue Cheney

GAO has power under federal law to conduct investigations for purposes of congressional oversight of the executive branch, as well as to sue officials that defy Congressional authority.

In this statement issued on January 30, The General Accounting Office (GAO) explains why it plans to sue Vice President Dick Cheney within 2 to 3 weeks, marking the first time in its 80-year history that GAO will sue a federal entity. (See related article in the Washington Post). Cheney and the White House continue to deny GAO requests to turn over the participant names, dates, times, and topics of meetings between members of Cheney's energy task force and outside groups and individuals. GAO has power under federal law to conduct investigations for purposes of congressional oversight of the executive branch, as well as to sue officials that defy Congressional authority.

In his refusal to meet the demands of transparency, Cheney continues to uphold the right of the White House to receive advice from citizens in private, without those conversations being released to the public. GAO has limited its request to specific information (noted above) that, even if disclosed, will not reveal the substantive content of the meetings.

Rep. Henry Waxman (D-CA), ranking minority member of the House Government Reform Committee, and John Dingell (D-MI) wrote a letter to Cheney stating that if the White House won this case in court, it would be "virtually immune from routine oversight," and that by setting a precedent such as this one, "executive privilege would never have to be invoked." Waxman and Dingell write in closing, "we do not believe that the American people . . . support radically changing our system of government so that the White House is accountable to no one."

In a related case, Judicial Watch, Inc (a nonprofit watchdog organization) filed suit against the National Energy Policy Development Group (D. D.C., No. 01-1530) in July 2001 for the minutes of meetings held by the Task Force. A D.C. District Court Judge ruled (on January 31) that the Bush Administration must explain, by February 5, why handing over information about its meetings to Judicial Watch would violate the Constitution. As Waxman and Dingell noted in their letter, both the GAO and Judicial Watch cases will be very important in setting precedent for future situations in which the Executive Branch refuses to disclose information to Congress or to the public.

Judge Rules in Favor of Congressional Tool for Information Access

The ruling could have great implications, especially in light of the fact that The General Accounting Office (GAO) is preparing to sue Vice President Dick Cheney for information about the meetings of his energy task force.

In a landmark court decision on January 18, 2002, a federal district judge ruled in favor of the 16 minority members of the Government Reform Committee who filed suit under the "seven member rule" for disclosure of adjusted data from the 2000 census. The "seven member rule" (5 U.S.C. § 2954) is a federal statute enacted in 1928 that dictates that an agency must release information if it is requested by at least seven members of the House Government Reform Committee (or five of the Senate Governmental Affairs Committee members). This marks the first time a lawsuit has employed the "seven member rule."

The ruling could have great implications, especially in light of the fact that The General Accounting Office (GAO) is preparing to sue Vice President Dick Cheney for information about the meetings of his energy task force (see related article, this issue). Rep. Henry Waxman (CA), ranking democrat on the House Government Reform Committee, hailed the seven member rule decision as "an important tool for the public's right to know," and provides more information about the case on this website.

Information Collection Requests up for Expiration

Normally, when agencies have pending paperwork requests at OIRA that do not get reviewed by the expiration date, approval for one year is inferred under the Paperwork Reduction Act (PRA).

OMB Watch recently reported on a regulatory hit list compiled by industry with the help of Barbara Kahlow, an aide for Rep. Doug Ose (R-CA) The list was compiled from information collection requests (ICRs), also called paperwork requests, that agencies must submit to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) for approval every three years. Potentially, OIRA could disapprove or revise an information collection request, leaving the associated regulation unenforceable, even if that regulation has been on the books for years. When the "list of 57" came out, we reported that 2 of the ICRs had already expired and 7 would be expiring in the next 6 months -- 3 of these were due to expire at the end of last year.

Normally, when agencies have pending paperwork requests at OIRA that do not get reviewed by the expiration date, approval for one year is inferred under the Paperwork Reduction Act (PRA). Recently, however, OIRA explained to OMB Watch that the existing delay of government mail is interfering with agencies' submissions arriving to OIRA on time, so OIRA is extending expiration dates by a month each time it fails to meet the deadline and agencies are to continue working under the current ICR approval. It is unclear how long the temporary approval will last.

At least three paperwork requests, two of which were on the "list of 57," have had their expiration dates extended. OMB Watch noticed that at least three ICRs due to expire on December 31, 2001 had their expiration dates pushed back to January 31, 2002, and will presumably be extended yet again to February 28, 2002, though as of February 4, the expiration dates on those ICRs in OIRA's Inventory of Approved Information Collections database were still January 31, 2002. The Environmental Protection Agency's (EPA) sewage sludge ICR (OMB No. 2040-0004), the Department of Health and Human Services' (HHS) ICR for an application to market a new drug (OMB No. 0910-0001), and the Department of

Labor's (DOL) ICR for a blood-borne pathogen/needlestick safety standard (OMB No. 1218-0246) are among those being postponed at OIRA. OMB Watch will continue to monitor the ICRs on the list of 57 and others to determine what actions OIRA might be taking to rollback important environmental, health, and safety regulations.

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