Search

In This Issue

Sludge -- Good for Fish?

Last Wednesday, June 19, the House Resources Committee held a hearing on the dumping of 200,000 tons of toxic sludge into the Potomac River by the Army Corps of Engineers.

"And, despite the fact that this practice is in blatant, indisputable violation of both the Clean Water Act and the Endangered Species Act, the Environmental Protection Agency (EPA) is in the process of re-issuing the Corps' permit to dump," according to Rep. George Radanovich (R-CA), chairman of the Parks Subcommittee. A recent story in the Washington Times reports that internal EPA documents argue that the sludge actually serves to protect fish by discouraging them from swimming where fishermen are present. "To suggest that toxic sludge is good for fish because it prevents them from being caught by man is like suggesting that we club baby seals to death to prevent them from being eaten by sharks. It's ludicrous," Radanovich told the Times.

Estate Tax Repeal Proponents Launch New Round of Misleading Attack Ads

Repeal proponents may have failed to secure enough Senate support to make estate tax repeal permanent (see this OMB Watch article) in their June 12 vote, but that vote seems to have only strengthened their resolve. They have launched attack ads against a number of Senators who voted to for reform over repeal of the estate tax instead of repeal it.

One such ad, a 60-second radio spot targeting Sen. Paul Wellstone (D-MN) can be heard online. Apparently, the ad, sponsored by Americans for Job Security, is being run in several states targeting, in addition to Wellstone, Sens. Tom Harkin (D-IA), Tim Johnson (D-SD), and Jean Carnahan (D-MO). AJS is a conservative business-led nonprofit, an offshoot of the Chamber of Commerce. The Annenberg Public Policy Center provides information about AJS, noting that they are an anti-tax, less regulation, shrink-the-size-of government group.

If the Wellstone ad weren't real, it would be laughable. Unfortunately, it is real and filled with falsehoods, innuendo, and omissions of key facts:

- **Falsehoods: In the ad, a farm owner asks his wife, in disbelief, "Paul Wellstone actually voted to tax people because they died?"** Despite what repeal advocates may say in their ads and fact sheets, the estate tax is not a tax on death, but rather a tax on the transfer of wealth -- great amounts of wealth, it should be said, from one person to another. More than 98% of estates never even have to file estate tax returns -- it is only those estates valued at more than $1.0 million ($2.0 million for couples) that must file an estate tax return, and this

exemption amount will rise to $3.5 million ($7.0 million for couples) in 2009.

- **Innuendo: Later in the ad, the man's wife says that they are going to write to Wellstone and tell him to, "Keep his [Wellstone's] money-grubbing hands off our farm."** Currently, fewer than 2% of estates -- and an even smaller percentage of farms -- pay the estate tax. Under current law, by the end of this decade, only 75 Minnesota estates will have any estate tax liability. Wellstone, however, actually went a step farther and voted for two different reform options -- one would have exempted all small businesses and family farms; the other would have accelerated the rise in the exemption so that beginning next year estates valued at $3.0 million ($6 million for couples) would have paid no estate tax. Neither of these reform alternatives passed the Senate, but they would have meant that only the top 0.5% of estates across the country would have paid the estate tax by the end of the decade -- and very, very few in Minnesota would have had to pay any tax.
- **Omission: The ad's couple makes the usual claim of pro-repeal advocates and bemoans the fact that, "We're going to have to sell the farm."** But according to recent USDA data, the average value of farms in Minnesota and surrounding states ranges from approximately $686,000 for small farms to $1,847,000 for very large farms. Given that the exemption for couples is currently $2 million, it means that most of Minnesota's family farms are already exempt from the tax -- and by 2009 hardly any would be covered. So if they couple in the ad had to sell the farm, you can bet they must be pretty darn wealthy.

The results of a recent poll make it clear that when the voting public is given a chance to hear *both* sides of the estate tax debate, 58% support reform and only 37% support repeal. The poll indicates that when they are given more information about the estate tax and who actually pays it, voters support reform over repeal by a margin of 2 to 1. Given this knowledge, it's not surprising that repeal advocates are trying everything they can to circulate thoroughly misleading and frightening information.

A Resounding "No" to Estate Tax Repeal

On June 12, the Senate rejected a proposal by Sen. Phil Gramm (R-TX) to make repeal of the estate tax, which under current law only expires for only one year, in 2010, permanent. Repeal advocates needed 60 votes to send the House-passed estate tax repeal bill on to the President for his signature, but only received 54 votes -- 44 Senators, including 2 Republicans, voted against repeal. This is even fewer votes than repeal proponents received in February on a non-binding .

The Senate also voted on, but did not pass, two Democratic reform alternatives, which would have preserved the estate tax but introduced other changes to exempt even more than the 98% of Americans who do not currently have any estate tax liability. One proposal, by Sen. Kent Conrad (D-ND) which received 38 votes, would have accelerated the higher exemption rates which were signed into law as part of last year's $1.35 trillion tax cut – immediately raising them to $3.0 million ($6.0 million for couples) through 2009 and $3.5 million ($7.0 million for couples) thereafter. The other, offered by Sen. Byron Dorgan (D-ND), would have exempted all qualified family owned businesses and farms from any estate tax liability and kept in place current exemptions that are scheduled to rise to $3.5 million for an individual in 2009, and received 44 votes.

With the many pressing concerns facing us -- strengthening our emergency response systems, educating and investing in our children, ensuring that the Social Security system remains strong for future generations, providing an affordable prescription drug plan for the country's seniors, and finding real ways to ensure that people have the education, job training and support they need to care for themselves and their families -- the Senate was correct to recognize that there are no leftover resources to provide tax breaks to the wealthiest 0.5% of estates. (Congress' Joint Committee on Taxation had estimated that permanent repeal of the estate tax would cost $100 billion in the decade ending in 2012 -- $56 billion in 2012 alone -- and other estimates show that repeal would cost the country more than $740 billion in the second decade of repeal.)

American Public Supports Reform -- Not Repeal
The Senate, however, was not only facing a lack of resources as it considered permanent estate tax repeal, but also a lack of interest among the American public for this costly and unfair tax cut. Polls conducted over the last 4 years show that tax cuts consistently rank at or very near the bottom of Americans' priorities, with issues such as ensuring Social Security's strength, providing a prescription drug benefit for seniors, and education remaining at the top of their lists. Moreover, the estate tax comes in last when compared with all the other tax cuts that are already a low priority.

A poll conducted in May by Greenberg Quinlan Rosner Research for OMB Watch and Americans for a Fair Estate Tax, shows that when voters are given a choice between repealing or reforming the estate tax, 58% support keeping it, with some reforms, especially those that would provide more protection for small farms and businesses. When they learn more about the estate tax and who it affects, their support grows to a margin of 2 to 1. In other words, when scare tactics are dispensed with and the facts are made known, 67% of those surveyed support reform of the estate tax.

Speaking at a press briefing to release the results of the poll, Conrad illustrated both the massive costs of repeal and the inherent unfairness of spending hundreds of billions of dollars to offer a tax break to the wealthiest of the wealthy by noting that, "Mr. Skilling, the former CEO of Enron, would benefit to the tune of $55 million if the estate tax is repealed," and that represents all of the Social Security taxes of "30,000 Americans earning

Estate Tax Polling Results

Get more background information and data from this poll.

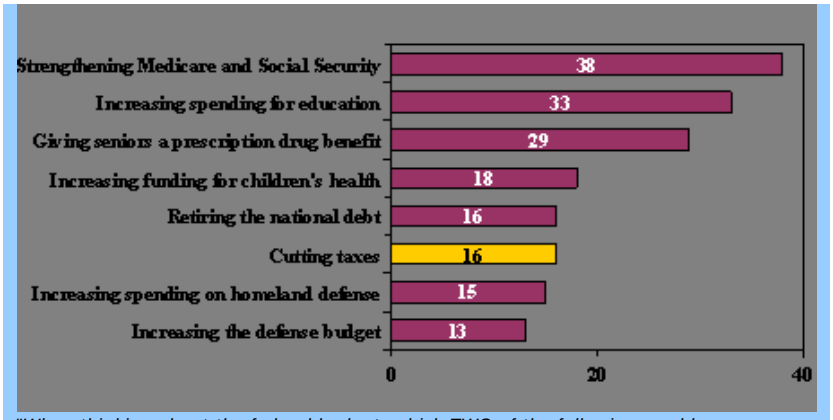
Federal Budget Priorities

$30,000 per year." Bill Gates, Sr, himself one of these wealthiest of the wealthy and an outspoken opponent of estate tax repeal, succinctly summarized the many strikes against repeal, saying, "Congress should reject the notion of wholesale repeal in the short term because it is fiscally reckless, and in the long term because we recognize the importance of protecting our democracy from a further buildup of hereditary wealth."

What's Next?
Even with the lack of support for repeal among voters, the objections of many who actually pay the estate tax, and the lack of resources to pay for a tax cut for a few thousand estates, repeal advocates will nevertheless continue in their efforts to make repeal permanent. Shortly after the vote, Gramm said he would bring the issue up again after October 1, when the rules that require 60 votes (called a "supermajority") to pass such proposals expire and revert back to a "simple majority" of just 51 votes. (For more on Senate efforts to reinstate these rules to preserve this key feature of the deliberative quality of the Senate, see this related article). Proponents of repeal have already launched a round of attack ads in Missouri, South Dakota, and Minnesota. For more on these ads and their use of innuendo and erroneous information, see this OMB Watch article.

Though neither reform alternative secured enough votes to pass, it was clear that Senate Democrats (and some Republicans) are now calling for responsible, reasonable, fair reform -- not repeal -- of the estate tax. With last week's vote policymakers can now turn to the important process of investigating just what that reform measure looks like.

See www.fairestatetax.org for more information on the estate tax, the efforts of the nonprofits coalition, Americans for a Fair Estate Tax, polling results and updates on recent action and statements about the estate tax.



"When thinking about the federal budget, which TWO of the following would you personally give the highest priority to?"

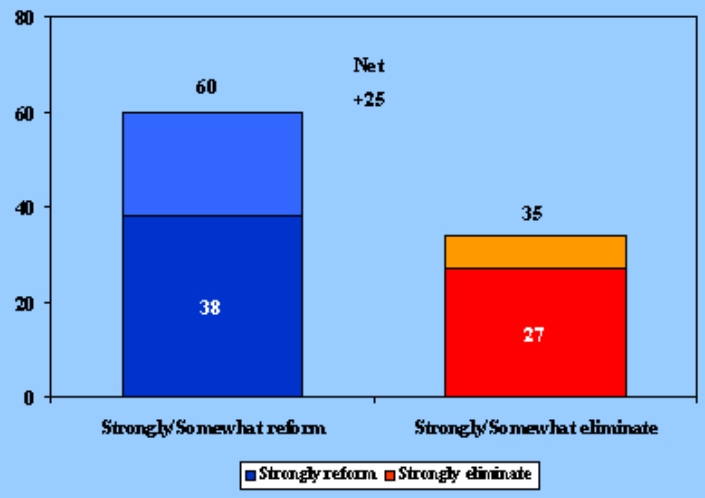
Repeal Message

Some people say we should eliminate the estate tax because it's nothing but a death tax that punishes those who succeed, especially small business owners and farmers. First, they spend their lives paying taxes on their hard earned money. Then, when they die, the government turns around and taxes it again. Children are often forced to sell the business or farm just to pay the taxes. We can't rob parents of the ability to provide security for their children.

Reform Message

Some people say eliminating the estate tax is a gift to multi-millionaires at the expense of 99 percent of American taxpayers. Giving them a new tax break would sacrifice our commitments to strengthen Medicare and Social Security, improve education, and fight terrorism. Instead, we should reform the estate tax to protect small businesses and family farms. That's the best way to advance the priorities that benefit all Americans.

Reform vs. Repeal



Do you favor eliminating the estate tax or simply reforming it to protect small businesses and family farms? Do you strongly favor (eliminating/reforming) it or somewhat favor (eliminating/reforming) it?"

Budget Process, October 1, And Tax Cuts

With the expiration of key Senate budget rules on October 1, tax cuts will get easier to pass.

With Sen. Phil Gramm (R-TX) vowing to bring permanent repeal of the estate tax back to the Senate floor this session, and the House voting one by one to make each element of last year's tax cut (which expires after 2010) permanent, attention turned last week to budget process and budget rules. Permanent repeal of the estate tax did not succeed in the Senate, even though 54 Senators voted for it, because the rules currently in place require a 60 vote "supermajority" for passage (see this related article). However, on September 30, 2002, various budget rules under the Budget Act will expire, and estate tax repeal, for example, would only require a simple majority, or 51 votes, to succeed, if it were to come to the Senate floor.

While the budget process is difficult to comprehend, and is hidden behind the substantive debates, it has very important implications for policy and legislation.

Last week, Sens. Kent Conrad (D-ND) and Russ Feingold (D-WI) introduced an amendment to the Department of Defense authorization to extend the expiring Senate budget rules in order to insure that there is a high threshold of support before passage of additional tax cuts beyond anything specified in the budget resolution (if one is passed this year). Specifically, the amendment would have:

- Extended, for five years, the 60 vote Senate supermajority requirement to waive budget points of order in the Senate, including those protecting Social Security, limiting total spending including tax cuts, and enforcing spending caps. For example, the estate tax vote on June 12 was not actually a vote on making the estate tax permanent, but a vote on waiving the budget rules of order, requiring 60 votes to succeed. Since it failed, the underlying substance was never voted on. With the expiration of the 60 vote supermajority requirement, a point of order would only take 51 votes to make repeal of the estate tax, or any other expiring or new tax provisions, a reality.
- Extended, for five years, budget enforcement act provisions, including rules to enforce discretionary caps.
- Extended discretionary spending levels, or caps, for two years, setting the caps at $768.1 billion in 2003 and $786.5 in 2004.
- Extended the Senate pay-as-you-go rule that disallows using any of the so-called Social Security surplus to pay for new tax cuts or new mandatory spending.
- Provided for the allocations among the thirteen appropriations bills from the total discretionary cap.

Since Republicans objected to the Conrad-Feingold amendment, it, too, needed 60 votes to pass. Unfortunately, it was defeated on June 20 by only one vote. What does this mean? Given a tight election year, the desire to avoid public backlash over filibustering, and the Republican obsession to pass more and more tax cuts, the expiration of the budget process rules on October 1 allows more room for tax cuts. More tax cuts, when there are so many other pressing priorities, are a really bad idea. While OMB Watch has never supported unrealistic caps on discretionary spending, the potential that the expiration of the budget rules would make it easier for the Senate to cut taxes seemed to be a worse outcome than two more years of discretionary spending caps.

It is possible that cooler heads will prevail and the Senate will once again extend the budget rules that help it remain the "greatest deliberative body." It could do so on a must-pass bill such as debt ceiling extension or anti-terrorism supplemental appropriations. We will keep you posted about other attempts to extend the budget process rules, as well as the continuing threat of more tax cuts.

Bumping Our Heads Against the Debt Ceiling

On June 28, the day Congress is planning to leave for the July 4 recess, Treasury Secretary Paul O'Neill has warned that the government will run out of money to pay its bills unless Congress increases the limit on how much the Treasury can borrow. This means parts of government, if not all of it, will no longer properly function, and government will default on its bills. This has been publicly described as a showdown between the Bush administration and Congress, but in fact it is really a showdown between Bush and the Republicans in the House.

The Senate already approved a bill to raise the debt ceiling by $450 billion, up from $5.95 trillion, on June 11, the same day that Sen. Phil Gramm (R-TX) proposed permanent repeal of the estate tax which would have cost another $100 billion over ten years. It was ironic that the same day the Senate was debating increasing the amount the government can borrow, it was also voting on increasing the debt by giving a tax break to the very, very wealthy. Nonetheless, the Senate approved the debt extension -- although at an amount lower than the $750 billion the Bush administration requested.

House Republicans are in a Bind

The White House now wants the House to pass an increase as well, but House Republican leaders are refusing to bring the issue up for a vote because they say they don't have enough support from their Republican colleagues to pass it. The reason the debt ceiling has to be increased is because of last year's $1.35 trillion tax cut -- and they do not want to draw attention to that fact, especially in an election year. In an attempt to sidestep this political stumbling block, House Republicans included provisions in its supplemental bill that would allow the increase to the debt ceiling to be added during the House and Senate conference on this piece of emergency spending legislation providing funds for anti-terrorist activities. In other words, they are trying to bury it in other more popular legislation.

The debt ceiling, currently $5.95 trillion, sets the limit on the amount of money the U.S. government may legally "borrow" by issuing Treasury bonds to the public, as well as the amount of money it may borrow from its own various accounts, such as the Social Security "trust fund." According to a January 2002 CRS report, when the government reaches the debt limit, that is, it cannot "issue new debt," it cannot free up enough funds to cover its expenses and obligations.

Democrats want the debt ceiling extension bill to be on its own and to be publicly debated. Senate Majority Leader Tom

Daschle (D-SD) has said he will not support an anti-terrorism spending bill that has the debt ceiling on it, which forces the House Republicans to face this difficult issue head on. House Democrats have said they will support only a one-month increase of $100 billion and want to use the month to come to an agreement on a budget for FY 2003.

Yet House Majority Leader Dick Armey (R-TX) acknowledges that Republicans do not have enough votes to pass a debt ceiling bill if it is free-standing. He has made the argument that the administration is playing the part of "Chicken Little" and says that there are gimmicks that can be used to give the House more time to find a way to accomplish the debt extension. O'Neill is having none of that. He notes that payments to Social Security beneficiaries will be suspended at the beginning of July and interest payments to various trust funds, including Social Security, will also come due.

But, maybe it's really just an old fashioned game of "Chicken" that we're witnessing -- O'Neill has also noted that, "It's not a question of whether we're going to do it or not, it's just a question of how close to the cliff we're going to run before we do what we know we need to do." The current debt limit was set in August 1997, and there have been more than 25 temporary and permanent increases in the last 20 years. So, why the hang-up on this seemingly cut-and-(very)-dry issue?

For politicians who are reluctant to be seen by their colleagues and their constituents as spendthrifts, the decision to vote to raise the debt limit can be a difficult one. But, as noted above, it is more than a little perplexing that a chamber so eager to spend billions of dollars to make costly tax cuts permanent is so unwilling to pass a measure that would make it possible for the government to continue meeting its financial obligations. Instead of arguing over the debt limit, our country's elected officials should be debating the merits of last year's tax cut and the huge strain it will continue to place on our resources for at least the next 10 years. Since few in Congress seem to be willing to do that, they should pass the necessary increase and move on to the business of allocating the country's remaining resources to our many needs.

Congressman Tauzin Supports Information Restriction

House Energy and Commerce Committee Chairman Billy Tauzin (R-LA) and senior Committee Republicans announced their support for increasing government secrecy in the name of national security. In a July 19 letter, the Republicans wrote the Director of Homeland Security, Tom Ridge, to indicate their "continued concern that sensitive information regarding potential vulnerabilities... are fully protected from improper public disclosure." The Republicans also encouraged Ridge to "coordinate a comprehensive and consistent approach for assessing threats and vulnerabilities posed by potential terrorist actions to America's critical infrastructure and manufacturing facilities."

The letter comes as Congress is considering creation of a new Homeland Security Department. It also comes at a time when the Environmental Protection Agency (EPA) is rumored to be considering a proposal to mandate that thousands of industrial, chemical manufacturing, storage and treatment facilities located across the United States conduct vulnerability assessments of the risks posed to their operations from intentional acts of terrorism. This proposal is very similar to Sen. Jon Corzine's (D-NJ) Chemical Security Act, S. 1602 (see related article).

Tauzin and the co-signers seem uncomfortable with EPA's pursuing the vulnerability assessments. "[W]e are concerned that the Clean Air Act [the authority EPA is using to mandate the assessments] was not enacted with deliberate terrorist actions in mind, and does not provide either the statutory authority or the appropriate framework for such assessments." The Republicans would prefer to grant that authority to the new Department, and recommends that, "rather than having individual Federal agencies and critical infrastructure sectors develop differing assessment models and security programs, the new Department should develop and promote a single framework for conducting vulnerability assessments across the critical infrastructure sectors." Even though the administration's bill does not transfer any of the EPA's expertise to the new agency.

But it seems the real concern is over public access to information about vulnerabilities. The letter notes, "we must ensure that vulnerability assessments are never allowed to be used as roadmaps for terrorist action." They add that the Clean Air Act does not "shield them [the assessments] from improper public disclosure." Under the Clean Air Act, EPA would make such information available to the public in order to help people protect their health and safety. According to recent surveys, most people do not know that they live within a vulnerability zone. These assessments could help families make informed decisions about where to live, where to send their kids to day care or school, and what dangers generally exist.

The Republicans may want to require the vulnerability assessments in the Homeland Security bill because of a provision inserted by the Bush administration. Section 204 of the bill creates a huge loophole in the Freedom of Information Act (FOIA), our safety net for right-to-know:

"Information provided voluntarily by non-Federal entities or individuals that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism and is or has been in the possession of the Department shall not be subject to section 552 of title 5, United States Code [the Freedom of Information Act]."

This broad and vague exemption raises a number of important questions:

- Exactly what types of information would be withheld?
- What qualifies as "infrastructure" or "vulnerabilities"?
- What counts as "voluntarily provided"?
- Is voluntarily-submitted information that "is or has been in the possession of the Department" (a sweeping phrase) exempt from disclosure even if it was obtained by another agency as part of the regulatory process?

Without these answers, this exemption could create a black hole into which companies dump information and through which they escape public scrutiny. Unfortunately these unanswered questions do not seem to trouble Tauzin and the other co-signers of the letter. And it fits exactly what the chemical industry has wanted all along -- less public disclosure about what it is doing.

This is not the first time this troubling concept has been raised. The Critical Infrastructure Information Act (S. 1456), recently pushed by Sens. Robert Bennett (R-UT) and Jon Kyl (R-AZ), proposes to exempt voluntarily-disclosed "critical infrastructure" information from FOIA -- a concept fiercely opposed by environmentalists, reporters, libraries, and other public interest groups. A recent letter, signed by 45 of these groups, urged Senators to oppose the Bennett/Kyl legislation.

Unfortunately, this issue has found its way into Bush's Homeland Security Act, and we're left wondering why. Certainly, it has nothing to do with the creation and elevation of a new department. In addition, we must wonder why Tauzin and his co-signers felt that this issue alone among the numerous complexities of establishing a new cabinet-level department required a specific letter of support. Perhaps it is because the provision is the least established or proven proposal in the bill. Indeed, as the debate surrounding the Bennett/Kyl bill suggests, such a broad new exemption from FOIA is a highly complex issue deserving of careful consideration and detailed handling. This clearly cannot be accomplished with a single sentence.

Beyond Tauzin, the other House members signing the letter were: Committee Vice Chairman Richard Burr (R-NC), Health subcommittee Chairman Michael Bilirakis (R-FL), Energy and Air Quality subcommittee Chairman Joe Barton (R-TX), Telecommunications and the Internet subcommittee Chairman Fred Upton (R-MI), Commerce, Trade and Consumer Protection subcommittee Chairman Cliff Stearns (R-FL), Oversight and Investigations subcommittee Chairman James Greenwood (R-PA) and Environment and Hazardous Materials subcommittee Chairman Paul Gillmor (R-OH).

Amicus Brief Filed in Challenge to Legal Services Restrictions

One hundred nonprofits and foundations joined forces in a friend of the court brief filed in federal District Court in support of four legal service programs in New York City, a private charity and pro bono attorney that are challenging advocacy restrictions on private dollars of legal service programs. The case, Dobbins v. Legal Services Corporation, was filed in December 2001, and seeks an injunction barring enforcement of rules that bar legal services programs from using private funds for lobbying, participating in agency rule-making, claiming court ordered attorneys' fee awards, and filing class actions on behalf of low income clients and communities.

This "program integrity" regulation forces legal services programs to create physically separate organizations for advocacy with their private dollars, or deny low-income clients access to this type of advocacy. (See 45 C.F.R. 1610)

The restrictions were imposed by Congress in 1996, after the Legal Services Program had been threatened with elimination. They are renewed annually through the appropriations process. During this same time the nonprofit community successfully stopped Rep. Ernest Istook's (R-OK) efforts to impose similar advocacy restrictions on all nonprofits that receive federal funding. But, as John Edie, General Counsel to the Council on Foundations said in a Foundation News and Commentary article, "At first glance, this case appears to affect only funding that helps provide legal services to the poor. But, in fact, the implications are much wider. The ultimate disposition of the Dobbins case could make clear to Congress that, in the absence of a compelling reason, it cannot place limits on private donations to organizations that also receive some federal funding, particularly when the private donations are funding speech."

The amicus brief argues that the legal services restrictions unconstitutionally infringe on the freedom of charitable donors and nonprofits by limiting their ability to spend private funds and target their resources as they see fit. It explains how the "third sector's ability to innovate and to enhance democracy hinges on its ability to act in partnership with government, while remaining free of unnecessary, onerous restrictions." To illustrate how unnecessary these restrictions are the brief explains how the government can (and does) ensure that its funds are not spent on prohibited activities without a requirement of physical separation, pointing out that:

"For example, since 1984, federal grant rules have prohibited federal grantees from using federal funds, either directly or indirectly, for a variety of advocacy related activities and costs. Neither physical nor organizational separation is required. Instead, the Office of Management and Budget's Circular A-122 defines unallowable costs and establishes procedures for allocating expenses…..There is, consequently, no justification for LSC to require legal services offices to do so much more…" (p. 23-24)

The Legal Services Corporation has filed a motion seeking dismissal of the case. The National Legal Aid and Defender Association and several legal services programs have also filed an amicus brief. This suit follows the 2001 Supreme Court decision in Velazquez v. Legal Service Corporation, which invalidated a restriction barring legal aid lawyers from challenging welfare reform laws.

For more information see the Brennan Center's fact sheet on Dobbins v. Legal Services Corporation.

2001 Giving USA Study Released

Some $212 billion in charitable giving was generated in 2001, a 0.5% rate of growth significantly lower than the 6% rate of growth in 2000, according to the 2002 edition of Giving USA, a publication of the AAFRC Trust for Philanthropy, researched and written by the Center on Philanthropy at Indiana University, released June 20. Arguably the most surprising news is that charitable giving centered around September 11th activities constituted less than 1% of all giving for the year.

Produced by the American Association of Fundraising Counsel (AAFRC)Trust for Philanthropy, in partnership with the Center on Philanthropy at Indiana University, the Giving USA study looks at giving trends in four areas: gifts from living individuals; gifts made through bequests; gifts from corporations and corporate foundations; and foundation grants. For all 2001 giving tracked in the study, individuals represented 75.8% $160.7 billion), foundation grants came in at 12.2 % ($25.9 billion), bequests contributed 7.7% ($16.3 billion), and corporate giving 4.3% ($9.05 billion).

In a year marked by a damaged economy, new combinations of causes to which funds were directed, and both new and decreasing current donor bases, September 11th was not the only influence on giving. The nearly $2 billion in gifts made as part of disaster recovery and relief efforts around September 11th accounted for only 0.9% of the total given in 2001. While estimates on future corporate and foundation gifts were not included in the figure, individuals reportedly gave $1.25 billion, and Foundation Center estimates peg corporate giving and foundation grants at $410 million and $195 million

respectively.

The study points out that in years where several key economic indicators -- such as personal income growth and corporate pretax profits -- grow slowly or fall, the rate of growth in giving tends to follow suit. Yet 2001 giving still managed to come in at levels of over 2% of gross domestic product. See more information, including details on ordering the study.

Reprinted from June 20, 2002 NPTalk.

Senate Finance Committee Passes Amended CARE Act

The Senate Finance Committee passed the Chair's amended version of the CARE Act (S. 1924, the Lieberman-Santorum compromise on the President's faith-based initiative) on June 18 by a voice vote.

The main portions of the bill create new incentives for charitable giving and specify equal treatment of faith-based and secular nonprofits when applying for federal grants. It also simplifies the rules on lobbying by 501(c)(3) groups that use the expenditure test in the IRS rules, by doing away with the distinction between direct and grassroots lobbying, but continuing the use of the direct lobbying expenditure ceiling.

It is not clear whether the bill will come up on the Senate floor before the summer recess. Some Senators, including Sen. Jeff Bingaman (D-NM), have raised concerns about the cost of the bill, and whether the revenue raising offsets it contains are sufficient. Finance Committee member Sen. John Kerry (D-MA) has said he opposes the deduction for non-itemizers because it is "not good tax policy," but he does support a provision that allows deductions for gifts made from rollovers of Individual Retirement Accounts (IRA). Because $2.5 trillion dollars are held in IRAs the potential for new giving from this provision is huge. However, there is concern that charities that serve low-income households, may not be well-positioned to get donations from those with IRA's negating an important purpose of the tax incentive package.

See for more details on the Finance Committee version of the CARE Act.

No ICANN Fix It

The nonprofit organization responsible for the management of the Internet's domain name space has recently drawn renewed criticism from Congress, international governments, nonprofits, and the broader online public, most recently for a series of reorganization proposals developed to address earlier concerns about transparency, accountability, and fairness around its deliberations and overall operations.

Since the start of its contract with the U.S. Department of Commerce in 1998, the California-based nonprofit Internet Corporation for Assigned Names and Numbers (ICANN) has been responsible for determining how issues around domain name registrations are handled. In order to obtain full management and control of the Internet domain name registry, ICANN is obligated to ensure that competition is increased in the domain name registration industry, the system itself is more secure, and that overall maintenance and governance process itself is more participatory, open, and accountable to the online public. The current contract is set to expire on September 30, 2002.

Marked by a steady stream of turbulence and controversy, ICANN critiques generally focus on:

- uncertainty of its mission and role, whether it is limited to coordinating maintenance of the domain name system and its technical stability and security, by providing an international forum for discussion and consensus building, versus serving a global Internet policy-setting or treaty-making organization
- its inability to foster, much less support, significant involvement by the broader online public in its deliberations
- its perceived inability to operate in a fair, transparent, accountable manner, that is amenable to the dictates of the various governmental entities and regulatory bodies affected by its deliberations, as well as other parties responsible for various Internet functions around the world

Until ICANN's contract expires, the U.S. government exercises a degree of authority, oversight, involvement, and influence unlike that of any government entity in the world, through the Department of Commerce's National Telecommunications and Information Administration (NTIA), the U.S. House of Representatives Energy and Commerce Committee, and the Senate Commerce, Science and Transportation Committee.

That level of involvement has long stirred distrust and discontent, as there is currently no representation of any government interests on ICANN's board. In fact, of the total 13 board members, ICANN has still only managed to officially seat five of nine members representing the Internet public interest community, called for under the original organizing charter. By contrast, the other nine board members, one selected by each of the ICANN domain name supporting organizations, have been seated. Only the Government Advisory Committee (GAC) provides the means for government input in ICANN activity, but this is limited to non-binding recommendations, rather than direct involvement.

There have been, however, attempts to maintain working relationships between ICANN and international intergovernmental entities, particularly the World Intellectual Property Organization (WIPO), the United Nations agency that advocates on behalf of intellectual property protections and enforcements through treaties around the world. WIPO helped develop the dispute mechanism employed by ICANN in matters involving combined domain and trademark name disputes. During its Internet Domain Name Process Second Session, however, concerns were repeatedly raised about the US government's direct involvement in ICANN, ICANN's potential role as a de facto trademark processing and arbitration body, and its decision making authority as a private entity operating under an amalgam of laws and rules around matters to a degree that potentially trumps international and intergovernmental arrangements. Similar concerns were echoed in the European Union presidency's June 3, 2002 draft statement sent to the EU Transport and Telecommunications Council, which is comprised of the telecommunications ministers from the 15 EU member countries. The Council followed suit during its proceedings, issuing signals on June 17, 2002 that ICANN needed more direct involvement from other governments, in order to prevent it from exceeding its boundaries. These articulations suggest that ICANN's role, whether unintentional or by design, inches more towards a global Internet governance body, rather than an inclusive international cooperation around the Internet's backbone.

In a May 29, 2002 open letter to NTIA Administrator Nancy Victory, a group of nonprofits, led by the Media Access Project, called for ending the current agreements granting ICANN administration of the domain name system, and replacing it with a competitive auction for administration rights. The groups articulated this "wake-up call" to direct attention to the lengthy approval of new top-level domains, in addition to the needs of non-commercial domain name holders in the overall governance framework; and what it considered a disregard for direct participation by the online public.

Just two days later, the ICANN Committee on Evolution and Reform, created to follow up a February 25, 2002 reform proposal drafted by president and CEO M. Stuart Lynn, issued its own set of recommendations. Public input was accepted on the specific recommendations in the report, in advance of the June 24 - June 28, 2002 ICANN board meeting in Bucharest, Romania to adopt the reform proposals.

This reform committee proposed an ombudsman to receive public complaints and report, on its discretion, those meriting action to the ICANN board; a public participation manager to encourage more involvement from the online public in ICANN activity; and an arbitration process through which non-binding decisions could be rendered around individual allegations of ICANN violations of its own by-laws. But the proposals stop short of addressing key participation and accountability concerns. For example, the committee calls for the ICANN board to consist of 13 to 19 members, including 5-11 members chosen by a nominating committee, and one seat reserved for representation from the Government Advisory Committee. There is not, however, a recommendation to reserve seats for representatives directly elected by the Internet public. More importantly, the reform recommendations do not spell out who would actually sit on the nominating committee itself, much less how ICANN will generate funds to sustain itself and its activities.

On June 10, 2002, Sen. Conrad Burns (R-MT) announced his intention to introduce legislation calling for more direct federal involvement in overseeing ICANN's operations, in order to ensure that it is limited to management of the domain name system, rather than broader Internet policymaking. Burns expressed concern that ICANN is operating without the transparency and accountability expected of federal agencies, and also criticized the Commerce Department for not being more watchful of ICANN activity to ensure that obligations were more aggressively met.

On June 12, 2002, the Senate Commerce, Science, and Transportation Subcommittee on Science, Space, and Technology hearing featured several critiques of ICANN's current operations and calls for increased scrutiny and oversight. It did not, however, produce any visible signs that ICANN's contract would end. Rather, several voices (including Burns') signaled interest in extending the contract, despite potential legislative activity to curb ICANN's scope of activity in the near future. GAO testimony during the same hearing urged the Commerce Department to issue an assessment of ICANN's performance and fulfillment of its obligations to date, something that NTIA's Victory promised to deliver as a publicly available document around the time of contract renewal.

ICANN continues to be roundly criticized for its April 2, 2001 agreement with the Commerce Department to extend Internet domain name registrar VeriSign's exclusive control over the domain name registry for ".com" Internet addresses in perpetuity, and the ".net" domain name registry, in exchange for releasing control of the ".org" registry. In addition, ICANN was sued in March 2002 by one of its own board members, chosen under direct elections by the online public, for failing to provide access to corporate records, a violation of state law. The ICANN board offered to grant limited access upon signing a confidentiality agreement with the ICANN board. That move prompted the nonprofit Electronic Frontier Foundation to file a motion on May 21, 2002 with the Superior Court of Los Angeles seeking to give the board member immediate access to the records. As of this writing, the matter is still awaiting resolution.

Resources

5/21-5/24/02 Proceedings
WIPO Second Session on Internet Domain Name Process
http://www.dnso.org/clubpublic/council/Arc10/pdf00001.pdf

6/3/02 Draft Statement to Transport and Telecommunications Council
European Union Presidency
http://register.consilium.eu.int/pdf/en/02/st09/09526en2.pdf

6/17/02 Results
European Union's Transport and Telecommunications Council Meeting
http://www.ue2002.es/portada/plantillaDetalle.asp?opcion=0&id=2196&idioma=ingles

5/29/02 Open Letter to NTIA
http://www.mediaaccess.org/filings/DoCrebidfinal.pdf

2/25/02 ICANN Reorganization Proposal
ICANN President & CEO, M. Stuart Lynn
http://www.icann.org/general/lynn-reform-proposal-24feb02.htm

5/31/02 Recommendations
ICANN Committee on Evolution and Reform
http://www.icann.org/committees/evol-reform/recommendations-31may02.htm

6/11/02 Press Statement
Senator Conrad Burns (R-MT)
http://burns.senate.gov/p020611a.htm

6/12/02 Testimony from Peter Guerrero
Director, Physical Infrastructure Group
U.S. General Accounting Office
http://commerce.senate.gov/hearings/061202guerrero.pdf

4/21/01 ICANN-VeriSign agreement
http://osecnt13.osec.doc.gov/public.nsf/docs/icann-verisign-0518

5/21/02 Electronic Frontier Foundation filing
on behalf of Karl Auerbach, ICANN board member
http://www.eff.org/Infra/DNS_control/ICANN_IANA_IAHC/Auerbach_v_ICANN

Race to Transfer .org Intensifies

On June 18, 2002, the Internet Corporation for Assigned Names and Numbers (ICANN) closed the bidding to both nonprofit and collaborative applicants that represent the future management of the .org Internet namespace.

As mentioned in a March 18, 2002 NPTalk Internet domain registration giant VeriSign agreed to give up its decade-long exclusive hold on .org registrations, in exchange for a advantageous arrangement to manage .com and .net registrations. Under the terms of a May 2001 agreement with ICANN and the U.S. Commerce Department, VeriSign will operate the .org registry until December 2002.

The January 17, 2002 recommendations of ICANN's Domain Name Supporting Organization Names Council (DNSO) suggested that .org be kept exclusive for formally recognized nonprofit and public interest groups, as well as any noncommercial interest in communications, cultural, educational, political, collaborative or community focused entities. It also stressed that the future operator of the .org registry should itself be a well-regarded nonprofit entity, yet all current ICANN-affiliated registrars could continue to register .org domain names -- currently a $10 million revenue generator numbering nearly 3 million registrations -- as well. While agreeing with the bulk of the DNSO report, the ICANN board did not promise to give exclusive consideration of the registry management to a nonprofit group.

On June 18, 2002, the Internet Corporation for Assigned Names and Numbers (ICANN) closed the bidding to some 11 entities expressing serious interest in managing the .org domain name registry. In addition to domain name registry firms, the pool of contenders is an eclectic mix of nonprofit and for-profit collaborators, including:

- Global Name Registry, manager of the new .name domain in a joint bid with the International Federation of Red Cross and Red Crescent Societies;
- the nonprofit Internet Society (coordinating body of the Internet Engineering Taskforce standards group) and Afilias Global Registry Services, current managing entity of the .info domain registry in a joint bid with IBM and a DNS hosting service;
- the Internet Multicasting Service (the force behind the first Internet radio station) and the Internet Software Consortium (developer of open-source critical information infrastructure software for the Internet), the combination of which has pledged to make publicly available for free the database toolset that would power the registry (Incidentally, the founder of IMS played a major role in developing the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system of publicly-available corporate filings under the U.S. Securities and Exchange Commission, and the ISC founder also co-founded the anti-spam Mail Abuse Prevention System (MAPS));
- the nonprofit clearinghouse Union of International Associations and current .org domain registry owner VeriSign
- Unity Registry, a joint effort consisting of the manager of the .coop domain (Poptel) and the .au country-code top-level domain for Australia (AusRegistry);
- two nonprofit applicants established especially for the application process, the DotOrg Foundation and the .Org Foundation.

A final decision is expected by the end of August 2002. More information on the bidders, including their proposals, are located online: http://www.icann.org/tlds/org/applications-received-18jun02.htm

Administration to Relax Clean Air Protections for Aging Power Plants

The Bush administration recently announced its decision to roll back clean air protections for older, coal-fired power plants, allowing them to modernize without installing the latest technology to cut down on emissions, as reported in the Washington Post.

Sen. James Jeffords (I-VT), chair of the Environment and Public Works Committee reacted angrily to the announcement, indicating he would use subpoena power to find out how the Bush administration reached its decision, and whether it was unduly influenced by big polluting power plants. In response, officials at the Environmental Protection Agency (EPA) say they plan to turn over documents after their proposal is reviewed by the Office of Management and Budget's Office of Information and Regulatory Affairs, though Jeffords is still pressing forward.

"This appears to be the biggest rollback of the Clean Air Act in history," Jeffords said in a prepared statement. "It is clear by [this] action that this Administration is intent on undoing more than 25 years of progress on clean air. The question is why?"

The decision, expected for some time, formally alters enforcement efforts initiated by the Clinton administration, which brought dozens of lawsuits after it uncovered hundreds of cases where aging power plants failed to install pollution control equipment during major modifications, a direct violation of the New Source Review (NSR) provision of the Clean Air Act.

Instead, the Bush administration will relax standards for upgrades, as described by the Natural Resources Defense Council, while curtailing new lawsuits. In particular, the administration intends to expand the definition of "routine maintenance," which is exempt from New Source Review, allowing utilities to make more extensive upgrades without having to install new anti-pollution equipment.

In devising this new rule, which EPA Administrator Christie Todd Whitman estimates could take three years, EPA will ask for comments on a range of cost thresholds from 1.5 percent to 15 percent of the unit's value being repaired. This proposed expansion of "routine maintenance" will reportedly be challenged in court as inconsistent with the Clean Air Act by environmental and health organizations, as well as states that suffer from the transport of pollution from other states.

Meanwhile, the administration says it will continue ongoing litigation initiated under President Clinton, but the shift in policy, and the administration's cozy relationship with industry, undoubtedly makes it much less likely those cases will be resolved on favorable terms.

Less than a week after the administration's announcement, the General Accounting Office -- the investigative arm of Congress -- released a report finding that electric power plants that began operating before 1972 emitted 59 percent of the sulfur dioxide and 47 percent of the nitrogen oxides (which are regulated under the Clean Air Act) from fossil fuel units in 2000, even though they generate only 42 percent of all electricity by such units.

This has serious health implications for many Americans; such pollution causes an estimated 30,000 premature deaths per year. A recent study (March 5, 2002) by the Journal of the American Medical Association linked long-term exposure to fine particles of air pollution from coal-fired power plants to lung cancer, concluding that people living in the most heavily polluted metropolitan areas have a 12 percent increased risk of dying of lung cancer than people in the least polluted areas.

In writing the Clean Air Act, Congress exempted older plants from compliance with new emissions standards because it was generally thought they would be phased out -- an assumption that turned out to be wrong. Yet instead of pushing these plants to clean up their act, the Bush administration seems intent on giving them a permanent free pass.

Battle of the Bills

The Senate is currently considering two chemical security bills that seem just about as diametrically opposed to each other as two bills could be.

Sen. Jon Corzine's (D-NJ) Chemical Security Act (S. 1602) is scheduled for mark-up this week. Corzine's bill would require that facilities that pose hazards to their neighbors look for safer processes and adopt them where feasible. Under the act:

- The EPA and the Department of Justice would identify the highest-priority facilities;
- Those facilities would conduct vulnerability assessments and evaluate options both for improving site security and for reducing chemical hazards through safer materials or processes; and
- Facilities would implement the most effective options.

The Chemical Security Act functionally represents a next step beyond the Risk Management Plans currently collected from chemical facilities under the Clean Air Act. Corzine's bill moves on from simply cataloging the risks to assessing potential methods of reducing the risk and making these facilities safer for workers and the communities around them.

The Clean Air Act Amendments of 1990 require some 15,000 industrial facilities to prepare Risk Management Plans. These plans inform workers and nearby communities about the potential consequences of a major chemical release. By educating the community and the facility's managers, the plans are intended to reduce hazards, prevent pollution, save lives, and protect property. Since September 11th, the plans have taken on added importance as communities weigh the possibility that a release could be caused intentionally by terrorists.

Unfortunately another bill in the Senate is calling for a step backwards concerning the RMPs and chemical plant safety. Sen. Kit Bond's (R- MO) "Community Protection from Chemical Terrorism Act" (S.2579), would eliminate all public access to the RMPs. People who live or work near chemical facilities would be denied information about these risks in the name of fighting terrorism. At the same time, the federal government would do nothing to reduce the chemical hazards that make industrial facilities a target for terrorists in the first place. It would:

- Keep communities in the dark about the threat to their own health and safety;
- Do nothing to physically reduce chemical hazards or improve chemical site security; and
- Shirk federal responsibility.

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