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FEC Delays Issue Advocacy Rulemaking

The Federal Election Commission announced that it will be not be ready to consider proposed regulations on issue advocacy on July 25, as had been planned. A new date has not been set, and other rulemakings, including a proceeding to define illegal coordination between campaigns and donors and advocacy groups, are also likely to be delayed. The Bipartisan Campaign Reform Act of 2002 (BCRA) requires that all rulemakings be completed by the end of the year.

The issue advocacy rulemaking will set regulations implementing BCRA's ban on broadcasts mentioning federal candidates within 60 days of an election or 30 days of a primary, and the exceptions for independent expenditures and candidate debates. The law also gives the FEC power to create additional exceptions for communications, such as grassroots lobbying messages, that are unrelated to federal elections. (Click here for more details)

Rules on soft money were approved in late June, and will be challenged in the Senate. The FEC published its 193 page Explanation and Justification for the new soft money rules July 15.

Meanwhile, the lawsuit challenging the constitutionality of BCRA is moving toward a September 30 deadline for completing pre-trial "discovery" proceedings. All parties are seeking evidence to support their claims, and a hearing will be held on July 25th to sort out disputes over how far parties can go in subpoening documents. The Republican National Committee has subpoenaed documents from the National Abortion Rights Action League and League of Conservation Voters, who not parties to the case. They are resisting the subpoenas, arguing that the RNC is abusing the subpoena power and seeking confidential records that are protected by federal law.

Senate Appropriations Subcommittees Push for Limited FY 2003 Community Technology Funding

On July 16, the survival of two key federal programs working to bridge the digital divide was given an additional boost during markup sessions for FY 2003 appropriations.

Two Senate appropriations subcommittees voted for continuation of the federal Technology Oppostunities Program (TOP) and Community Technology Centers (CTC) program at FY 2002 funding levels. The Senate Commerce, Justice, State and the Judiciary Appropriations Subcommittee voted for $15.5 million for TOP, while the Senate Labor, Health and Human Services and Education Appropriations Subcommittee voted for $32.5 million for CTC.

These figures are far below the desired level of $45 million for TOP and $65 million for CTCs sought by supporters of both programs, including the members of the Digital Empowerment Campaign, a coalition of more than 100 organizations, including OMB Watch, suppporting continued federal investments in community technology to increase the availablility and benefits of technology to underserved communities across the United States. It does, however, provide much needed leverage to ensure their continued operation in FY 2003, despite their proposed elimination under President Bush's FY

2003 budget.

For more information on the Digital Empowerment Campaign, visit www.DigitalEmpowerment.org

Appropriations and Supplemental Spending Bill Update

Negotiations between the House and Senate on the FY 2002 supplemental spending bill (H.R. 4775) broke down after the White House threatened to veto the bill if spending was much more than the $28.8 billion requested by the President and consisted primarily of spending for defense and national security and aid to New York City.

Appropriators had agreed on at $30.4 billion supplemental. Ironically, in order to cut costs, the conference agreement finally reached on July 19th completely cut funding for the Workforce Investment Act (to restore the rescission of funding for dislocated workers passed last July and to provide additional funds for National Emergency Grants)—funding that the President had requested, and the House and Senate had both approved.

It is likely that the same Presidential veto threat against "excess" spending will make the appropriations process as a whole even more difficult than usual. The House is operating under its own budget resolution limiting appropriations to $759 billion to be divided among the thirteen spending bills. The Senate has not passed a budget resolution, but there has been agreement for discretionary spending in the amount of $768 billion. Besides the funding level discrepancies and the threat of Presidential veto, the creation of the "Department of Homeland Security" will likely cause more delays as appropriation committee jurisdiction is determined.

OMB'S Mid-Session Budget Review: Rosey Pays Another White House Visit

It comes as no surprise that the budget review issued by the Office of Management and Budget on July 19, 2002, shows a higher deficit for 2002 than predicted in its February 2002 report—from a $106 billion to a $165 billion deficit. In spite of the increasing deficit, OMB is optimistic about a quick return to budget surpluses in 2005, which are estimated to continue to increase over the next decade. In other words, according to OMB, this has been a rough time, but the President's economic and fiscal policies, particularly the tax cut, insure that the long-term outlook couldn't be better.

We are less than confident in OMB's rosey predictions.

- The prediction of a return to surplus in 2005 conceals the fact that the surpluses include the Social Security surplus, which is supposed to be "off-budget" revenue and considered separately from "on-budget" general revenue. If the Social Security revenue is not counted, there are budget deficits in every year through 2012.
- OMB bases its projections on the assumption that there will be "a resumption of growth in tax payments produced by a stronger economy and a stronger stock market." Given the uncertainties of the economy and the continued decline of the stock market, a return to surpluses, even including Social Security revenue, may be over-optimistic, unless there are huge cuts in spending.
- We would agree with OMB that the primary reasons for the increased deficit this year and in the short-term has been the economic recession, the declining stock market fueled by daily accounts of corporate malfeasance, and the resources required to response to the September 11 attacks. The biggest cause of long-term deficits is, however, the tax cut, and especially the effects of the tax cuts scheduled to go into effect after 2004, which mainly benefit the wealthiest of Americans.

OMB's predictable response to the economic uncertainty is that spending must be "tightly restrained." Ultimately, debates about the extent of budget deficit, the precise time that the budget will return to surplus (or not), and even who caused the deficit, disguise the underlying politics of the budget. The Administration's policy is to use the deficit situation (while putting some sugar coating on it) and economic uncertainty to impose limits on spending. (Spending on tax cuts doesn't, according to this view, count as spending, but as economic stimulus.) The effort to shrink government can be most effectively accomplished by giving tax cuts to the top 1% of the population and to corporations, while cutting government spending that benefits ordinary Americans, states and communities, and the environment.

In other words, in spite of rhetoric about tightening regulations to prevent corporate jimmying of the books, the wealthy and corporate interests are given preference over the rest of us. Never mind that economic stimulus might better be accomplished by helping get the unemployed to work through training programs, or assisting the struggling working poor so they can keep on working, or educating a new generation of Americans to prepare them for the future, or any of the other ways that government spending could both address our stated belief that everyone should have an opportunity to succeed as well as keeping the economy fueled with skilled workers, now and in the future.

Not only are tax cuts seen as the only solution, but the next major phase-in of the tax cuts scheduled for 2004 are not tax breaks for ordinary Americans, most of which have already gone into effect, but rather additional tax breaks for the wealthiest. The disparity of the tax cuts is striking. According to a report by Citizens for Tax Justice, while the top 1% of the rich have already received a "down payment" on their tax cuts—averaging just under $12,000 each this year, 80% of their tax cuts is scheduled to come from changes won't take effect until after 2004. Not only do the tax cuts make a $1.4 trillion dollar dent in the budget over the next decade, they will also give the most breaks to the wealthiest, while ordinary Americans, who want a good education for their kids, a prescription drug benefit for seniors, and Social Security for their retirement, will have to make up the difference. For example, see the Center on Budget and Policy Priorities' report comparing of the costs of the tax cut, particularly for benefits going to the top 1%, and the cost of a prescription drug benefit.

In other words, OMB's report basically says that tax cuts for the wealthy are good, but spending for the priorities of ordinary Americans must be cut. Then, we'll have surpluses once again, when it will, no doubt, be time for another round of tax cuts aimed at the wealthy and corporations.

IRS Sets 2004 Goals for E Filing Form 990, Seeks Comments on 990 EZ

The Internal Revenue Service expects to develop an electronic filing system for nonprofits to file Form 990, the annual information return required of most groups. Terry Lutes, director of the IRS's Electronic Tax administration, told participants in a July 9 web audio broadcast sponsored by the IRS that he is working with software developers to develop better e filing systems.

The IRS has also published a notice asking for public comments on whether changes should be made to Form 990 EZ. The IRS is interested in hearing whether the information collected is necessary to achieve its oversight purposes, the accuracy of their estimate of the burden of completing the form, ways to enhance the quality and utility of the information collected and reduce the burden on nonprofits. Comments are due September 6th, and should be sent to Glenn Kirkland, IRS, Room 6411, 1111 Constitution Ave. NW, Washington, DC 20224.

CARE Act, Faith-Based Initiative Update

Following a press conference sponsored by Americans for Community and Faith-Centered Enterprise and the Charitable Giving Coalition last Thursday, Senate Majority Leader Tom Daschle (D-SD) agreed to seek agreement on rules of debate so the CARE Act (S. 1924) can go the Senate floor during the week of July 22. CARE Act sponsors Sen. Joe Lieberman (D-CT) and Sen. Rick Santorum (R-PA) spoke at the press conference, and said they expect the bill to be considered before the August recess. The bill passed the Senate Finance Committee in June, with several amendments.

In a July 1 announcement the Department of Labor announced the first grants targeted to faith-based and grassroots organizations, granting $17.5 million to 12 states, 9 intermediary organizations and 20 small groups. The money will be used for the One-Stop Career System program. Previous attempts by the administration to set aside funds for faith-based groups have been challenged because they created a preference for religious groups. However, the Department of Labor grants were available to both faith and community based organizations, with small size and local governance being the defining criteria for eligibility.

Corporate Reform Bills Differ on Nonprofit Disclosure

In the wake of the widening corporate accounting scandals, both the House and Senate have passed versions of corporate accountability and reform legislation. As reported in a previous Watcher, on April 24, the House passed the "Corporate and Auditing Accountability, Responsibility, and Transparency Act" (H.R. 3763), while the Senate passed its version (S. 2673) last Monday, July 15th. The conference committee that will hammer out the differences between the House and Senate version was appointed on Wednesday, July 17th, and has promised to be finished with the legislation by July 26th.

The House version is of most interest to the nonprofit community, as it contains a provision that charges the Securities and Exchange Commission with developing rules that require a corporation to report contributions to a nonprofit organization if any of the corporation's directors or members of their immediate family are members of that nonprofit's board. This applies to contributions over $10,000 made by the corporation or any officer of the corporation in the last five years, as well as any other activity that provides a "material benefit" to the nonprofit, including lobbying. While OMB Watch supports disclosure, there are technical problems with this legislation that need to be addressed.

There is uncertainty about whether nonprofit disclosure language will be included in the final legislation that comes out of the conference committee. While several sponsors of the House legislation feel strongly about the issue, the Senate sponsors did not make it a priority. There have been several recent high profile cases of corporations giving large donations to corporate officers' pet causes (such as Enron giving large donations to a hospital chaired by a member of its audit committee) as well as an increase in "strategic philanthropy" where corporations give money to nonprofits that work to advance their business interests (for an excellent article on groups tracking this type of giving see this page).

We'd like to hear your input. If you have an example of a corporation using undisclosed donations to influence the policies of a nonprofit, or to use an ostensibly independent nonprofit to further its business goals (for example, Citizens for Better Medicare), please post it for discussion in our forum.

Church Electioneering Bill Gains Sponsors, IRS Issues Guidance for Religious Organizations

Two bills that would allow religious congregations to endorse or oppose candidates for office and spend church funds on electioneering gained new sponsors last week, as its sponsors criticized the IRS for publishing a Tax Guide for Churches and Religious Organizations, Publication 1828, in early July.

The Guide clarifies what activities are permissible in regard to elections and issue advocacy, and what activities may threaten a congregation's tax exempt status, and reviews recordkeeping and disclosure rules. The Guide notes that voter education and similar activities "conducted in a nonpartisan manner do not constitute prohibited political campaign activity", and provides a number of examples. It also notes that the ban on partisan electioneering "is not intended to restrict free expression on political matters by leaders of churches or religious organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy."

Despite these statements, Reps. Phillip Crane (R-IL), Walter Jones (R-NC) and Joseph Pitts (R-PA) said the Guide illustrates the need to change the law. OMB Watch filed testimony opposing the bill this spring, explaining that existing law does not prevent religious organizations from speaking out on public issues. We also explained how the bills would allow religious organizations to spend tax deductible contributions on everything from bumper stickers and phone banks to

direct contributions to candidates.

OMB Hijacks Clean Air Standards

In what appears to be part of a broad effort to reshape air regulation, OMB's Office of Information and Regulatory Affairs (OIRA) apparently forced EPA to withdraw two proposed emissions standards for stationary internal combustion engines and industrial boilers, insisting that the agency make changes that may be inconsistent with the Clean Air Act.

Specifically, OIRA is pressuring EPA to provide exemptions from all new clean air standards if facilities can show their emissions are below a certain level, as first reported by Air Daily, a trade publication, on July 12. The use of such "risk-based exemptions" appears to violate the Clean Air Act, which calls on facilities to make upgrades and cut air pollution using the best available technology. With a risk threshold, particularly a high one, this could negate the need for facilities to make such upgrades and render the standards meaningless. In the case of EPA's standard on internal combustion engines, Inside EPA reports that as many as 40 percent fewer emissions sources would be regulated.

Bush political appointees at EPA appear to be complicit in this effort, with agency staff objecting that it is illegal. Not surprisingly, industry has weighed in heavily for the exemptions, and has apparently convinced EPA's assistant administrator for air, Jeffrey Holmstead, who previously worked on behalf of industry in opposing strong clean air standards.

Industry has also worked to enlist OIRA's help. In one of a number of meetings on recent clean air standards, the Council of Industrial Boiler Owners -- including General Motors, ALCOA, Georgia Pacific, and the American Forestry & Paper Assn., which states its case in three white papers provided here -- pressed risk-based exemptions with OIRA on June 24, shortly before EPA was forced to withdraw its boiler standard on July 3.

Already, OIRA has pushed such exemptions in two other proposed EPA air toxics standards for plywood and auto-painting facilities. Both were cleared by OIRA with the necessary changes on July 9, but have yet to be published in the Federal Register for public comment. On July 22, EPA published a proposed rule on air pollution from brick and clay manufacturers that also includes risk-based exemptions, a first for such a standard. But as a non-major rule, this did not require OIRA approval, and it is unclear whether OIRA factored into EPA's decision.

Meanwhile, in what EPA calls an "unusual collaboration," OIRA, under the leadership of John Graham, will actually help develop -- from the very beginning -- regulations on air pollution from non-road diesel engines. Since its beginning in the early 1980s, OIRA has reviewed agency regulations, but never before has it actually been in the position of crafting regulation from scratch, which in the case of air emissions, Congress has delegated exclusively to EPA.

Indeed, OIRA has no statutory authority at all over agency rules; this power flows from Executive Order 12866, and this only covers regulatory review. Yet clearly, this has not deterred Graham from hijacking clean air policy, both through the review process and now by taking, in Graham's words, an "up front" role.

Alarmingly, because this new role is not covered under the executive order, OIRA will be functioning without any disclosure requirements; for instance, OIRA could potentially meet with affected interests and dictate the substance of the rule without ever having to disclose this to the public.

Graham began his tenure at OIRA by implementing new disclosure measures that helped make OIRA more accountable, releasing a memo on Oct. 18, 2001, outlining his vision for transparency. Yet OIRA now appears to be headed in the wrong direction, even in the context of its traditional review role.

When a rule is withdrawn from OIRA review by an agency -- as EPA's boiler standard was -- there is no reason provided for the withdrawal, and OIRA's docket on the rule, and its possible role in the decision to withdraw, is withheld from the public. Earlier in his tenure, Graham made use of "return letters," clearly stating OIRA's reason for rejecting an agency rule. Between July 20, 2001, and Feb. 12, 2002, Graham issued 17 such letters; since then, however, none have been issued.

The last of these letters, on tire-pressure monitoring, proved to be highly controversial and undoubtedly generated political headaches for Graham. It may be that this has discouraged the use of return letters, and instead OIRA has forced EPA to withdraw rules in place of return letters, avoiding public attention and possible embarrassment for the administration.

Where a rule is approved with change -- such as EPA's air standard for plywood -- OIRA labels the rule "consistent with change." Yet OIRA makes no indication as to the nature of the change. For instance, a rule receives the same label whether changes are made for simple clarity or whether they are made for substance, altering the very nature of the rule. Under Executive Order 12866, agencies are supposed to document changes made to rules while at OIRA, but as the General Accounting Office has found, this documentation is inconsistent and frequently inadequate -- which becomes especially problematic as OIRA assumes a more aggressive role in dictating regulatory policy across federal agencies.

Department of Homeland Secrecy

The secrecy proposal began in President Bush's proposal for the creation of a new Homeland Security Department as a single vague and overly broad sentence describing a new FOIA exemption for information concerning "infrastructure" and "vulnerabilities" that was "voluntarily submitted." Numerous information provisions which go much further have now been proposed to replace this section of Homeland Security Act.

The House Select Committee reviewing the Homeland Security Act has approved one of those expanded versions of the President's FOIA exemption for certain critical infrastructure information voluntarily shared with the federal government. The House proposal still creates a new blanket FOIA in order to "protect" this information from public disclosure. The proposal also describes the exemption with language such as "not withstanding any other provision of law," which could be used to even conceal information required by the government.

Unfortunately the House information provisions go even further by granting corporations unprecedented immunity from the civil consequences of violating the nation's securities, tax, civil rights, environmental, labor, consumer protection, and health & safety laws. These provisions would essentially tie the government's hands, and potentially those of third parties as well, in holding corporations accountable for wrongdoing. The information proposals would also preempt all state and local open records laws. State and local authorities would be barred from disclosing information that is required to be public under state or local law if it is withheld at the federal level. Additionally the section contains a provision that would criminalize the release of this information with up to a year in jail.

The House Select Committee passed the information provisions after an amendment, offered by Rep. Rosa Delauro (D-CT), to remove the FOIA exemption section from the bill was defeated in a party line vote of 4-5, with all of the Republicans voting to keep the exemption, and all of the Democrats voting to remove it. It has also been reported that more than a dozen Blue Dogs, a coalition of moderate House Democrats, sent a letter urging their colleagues to support FOIA exemptions to foster more sharing of information with the government on computer-security liabilities.

It remains to be seen if the restrictive information provisions will find as much support in the Senate as they begin to take up the Homeland Security Act in earnest. Currently, Senate Government Affairs Committee, chaired by Senator Lieberman (D-CT), is scheduled to begin to consider amendments on the National Homeland Security and Combating Terrorism Act of 2002 (S. 2452) on Wednesday July 24th. This bill, a modified version of one offered by Sentor Lieberman in the beginning of May, differs strongly from the President's proposal and does not currently include any restrictive information provision or FOIA exemptions.

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