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For your convenience, the [OMB Watcher](#) will now also be available in full as a PDF document.

### "PART" And The Federal Budget

There has been little public or media attention to the "Program Assessment Performance Tool" (PART) developed by the Office of Management and Budget (OMB), even though its explicit and primary purpose is to evaluate and tie program "performance" to budget appropriations. OMB is also taking this effort very seriously. Why this sudden renewed attention to "government performance?"

It is instructive that one of the questions included in the original PART tool, "Is the federal role critical?" hints strongly at an underlying political motivation – namely, to shift more and more federal responsibility to states or private entities. While the question was removed from the PART because it was "too subjective and could vary depending on philosophical or political viewpoints" (not to mention the unlikelihood that any program would guarantee its demise by answering "no"), the nonprofit community should remain alert as PART is used and incorporated into the President's 2004 budget. OMB Director Daniels still seems to like the question about the federal role. He noted in a July 2002 [memorandum](#) to agency heads that, in spite of the subjective/political nature of the question, many favorable comments were received that "this question is so important that it should not only be retained, but be elevated in importance in the overall score." He promises that "[t]he appropriateness of the Federal Role in addressing national interests, problems or needs will be specifically examined during OMB's Fall Budget Reviews," even while it has been removed from the PART.

PART itself seems to be an effort by the President to "fast track" the more complicated and iterative Government Performance and Results Act (GPRA) process to quickly arrive at a simple rating of government programs that can be used for budget recommendations. The President's 2003 budget included a red, green and yellow light analysis. PART is intended to remedy the obvious subjectivity and broadness of that designation (even though one of the major concerns

expressed about PART is its own degree of subjectivity). The shrinking of government is a long-standing conservative goal and PART -- along with tax cuts, demolition of regulatory standards, and increasing efforts to devolve federal responsibilities -- may be one of this Administration's tools to accomplish that goal.

PART was designed under the "Budget and Performance Integration Initiative," one of five Presidential management initiatives, and its stated intention is to build upon GPRA, although there remains some confusion about how, exactly, it relates to GPRA. The object of the PART is to get consistent and objective performance data from government programs and use that information to make budget decisions. One of the objectives of GPRA, passed in 1993, is to improve Congressional decision making through the provision of objective information about the effectiveness and efficiency of Federal programs and spending. But that is only one of the objectives -- the others include improving the confidence of the American people in the capability of the Federal government, improving Federal program effectiveness and public accountability, helping Federal managers improve service delivery, and improving the internal management of the Federal government. In the worst case scenario, PART is a tool designed to by-pass the broad effort of GPRA and go directly to making budget decisions based on a simplified measure of "performance."

The PART consists of six questionnaires designed for different government activities -- competitive grant programs, block/formula grant programs, regulatory-based programs, capital assets and service acquisition programs, credit programs, research and development programs, and direct federal programs. Essentially, it consists of "yes" and "no" questions, although in the "results" section of the tool there are some additional gradations. OMB initially tested the instrument on a few programs in the spring, and it was then reviewed by an independent (although slanted and lacking in a public interest nonprofit voice) advisory council, the [Performance Measurement Advisory Council](#). OMB made some revisions in the tool as a result of this review process. Copies of the PART [instruments](#) and instructions are on the OMB website. It is now being used by a selected 20% of all government programs/activities as they prepare their 2004 budget submissions. These programs amount to \$480 billion, or roughly one quarter of Federal spending. A complete list of all the programs to be assessed for FY 2004 can be found through the previous link. There is little indication of how these programs were chosen, but many of them are targeted to low-income and vulnerable populations, including:

- Supplemental Security Income (SSI), Social Security Disability Benefits
- The National School Lunch Program
- All vocational and adult education programs
- SAMHSA Projects for Assistance in Transition from Homelessness, Children's Mental Health Services and Substance Abuse Treatment Programs
- The State Children's Health Insurance Program (SCHIP)
- Housing Vouchers and Section 8 Project-Based Rental Assistance, Elderly Housing Grants, and Disabled Housing Grants
- OJP Residential Substance Abuse Treatment and Drug Courts
- The Air Toxics Program, Superfund Removal Program, Drinking Water State Revolving Fund, and Pollution Prevention Research

The programs will be evaluated as "effective," "moderately effective," "minimally effective," and "ineffective" for different sections of the PART, with assignment of an overall score of "effective" or "ineffective." Exactly how scores will be released and in what detail and form is still under discussion. While Daniels has made assurances that the PART scores will not be used, in and of themselves, to slash program budgets, given the underlying ideological position of the Administration, it is wise to take such assurances with a grain of salt.

The Performance Measurement Advisory Council meetings are open to the public (although the public is not allowed to speak.) The next meeting will likely be in February, and meeting announcements are published in the Federal Register. The OMB website page also contains more information about [PART](#) and the [President's Management Agenda](#), and also occasionally solicits comments from the public. Neither [comments](#) submitted by OMB Watch after the first meeting, nor any other indications of public/stakeholder comments, appear on the OMB webpage. We will continue to report on this issues, and encourage nonprofit attention as the PART is implemented.

## U.S. Treasury Releases FY 2002 Deficit Numbers

On Friday, October 25, Treasury Secretary Paul O'Neill and Office of Management and Budget (OMB) Director Mitchell Daniels released the [Treasury Department's summary of the budget results for fiscal year 2002](#), which ended September 30. According to this report, FY 2002 closed with a \$159 billion deficit -- \$2 billion larger than the \$157 billion the Congressional Budget Office (CBO) predicted in its [Monthly Review earlier this month](#).

The Treasury report notes that total FY 2002 receipts were \$14 billion lower than it had anticipated in its [Mid-Session Review in July](#). The recession's effects on wages and salaries, as well as the stock market's effect on capital gains, were cited as the primary reasons for the decline in individual income taxes this year. Despite these drops and the window on the economy's performance they offer, O'Neill claimed that he is "confident that we are on the road to recovery and fiscal stability."

Daniels, however, offered a more guarded, even pessimistic, view of the situation, saying that, "It's now clear that the unexpected surge in revenues toward the end of the last decade was temporary and that revenues are returning to historic levels for reasons unrelated to legislative changes." His solution to this independent return to "historic levels" of revenue and the increased defense and homeland security spending is to reiterate that it is "absolutely essential that we set aside business as usual and keep tight control over all other spending." In other words, the \$1.7 trillion tax cut enacted last year is not to blame for the deficit, but the deficit is the reason the country can't address needs beyond homeland security and defense.

The deficit this year, however, is not expected to be much larger than 1.5 percent of the total economy and will likely decline over the next 5 years when surpluses will return. By comparison, the [Center on Budget and Policy Priorities estimates](#) that if the tax cut were to be made permanent, it would amount to 1.8 percent of GDP annually over the next 10 years. Given the relatively small deficit, then, it is not clear why Daniels and others are pushing so hard for all other spending to be cut. Why isn't it essential that we spend the extra \$7.4 billion each year needed to insure all uninsured children? Or, what's not essential about spending the extra \$2.5 billion annually to meet the government's own legislated obligation to fund disability education programs. Why isn't it essential to spend the extra \$6.3 billion that could provide

job training to 2 million adults and give them the skills and knowledge to earn more and provide for themselves and their families? Or even the \$20 billion estimated to be necessary to help states and their vulnerable residents through a \$50 billion budget shortfall? All of this represents necessary spending -- if Daniels and other fiscal conservatives are uncertain as to where to look for the funds to address these and other national priorities, and do not want to increase the current deficit, they might want to consider freezing their tax cut to free up a few hundred billion dollars. Finding the will to fund these needs is essential.

## Senate Passes Temporary Extension of 60-Vote Rules

By Unanimous Consent, the Senate passed a 6-month extension of its expiring "supermajority" 60-vote point of order rules late Wednesday, October 16.

The agreement provides a six-month extension of the Senate's provision requiring 60 votes to waive certain budget points of order, such as the point of order against any tax cut or spending legislation not provided for in the most recent budget resolution. It also has a six-month extension of the Senate pay-as-you-go rule, requiring 60 votes to pass any tax cut or mandatory spending legislation that would increase the deficit.

The resolution's sponsors, Sens. Kent Conrad (D-ND) and Pete Domenici (R-NM), originally wanted the 60-vote rules extended for 5 years, and then compromised on one full year -- the passage of only a 6-month extension reflects the objections of Sen. Phil Gramm (R-TX) and others who were opposed to any extension and had threatened to prevent passage. Earlier compromises had also done away with any discretionary spending cap.

The implication is that it will be difficult to pass controversial tax legislation -- such as repeal of the estate tax -- without 60 votes. Unfortunately these important budget procedures will expire the day after income taxes are due -- April 15. No doubt conservatives will oppose renewal.

For more details on the role of the Senate's 60-vote point of order rules, please see [this OMB Watch analysis](#).

## Online Interaction Between Local Government and Citizens

The [Pew Internet and American Life Project](#), in conjunction with the [National League of Cities](#) -- a municipal organization consisting of 1,800 cities and towns, released a [report on October 2](#) on how local officials use the Internet for dealing with constituents online. The study suggests that localities may have embraced online technology out of necessity more so than their federal counterparts, but that a significant disconnect exists with respect to the expectations and attitudes of local officials and their constituents, as they address community issues. [NPTalk discusses the key findings](#) and its implications for citizen interaction with local government.

## Study Finds Deficient Tracking for Federal Grants to Faith-Based Groups

The [Roundtable on Religion and Social Welfare Policy](#), a non-partisan research organization, has released a report on government funding of faith-based social services, stating in its press release that "it is nearly impossible to track how most of the money is being used."

The primary reasons cited for difficulty in tracking these funds were:

- **Devolution** -- States contract out federal funds at many different levels;  
No centralized system or database tracks grants, contracts and vouchers;
- **Indirect financial support**, such as vouchers or free use of public facilities, is not adequately tracked; and
- **Grant documentation does not indicate any religious affiliation or organizations receiving public funds.**

Richard Nathan, Director of the Rockefeller Institute, noted "It's important to note that it's not the fault of faith-based groups that there's little information about the public funding they receive. Adequate tracking systems simply don't exist to provide it." He also said this means little is known about the comparative effectiveness of faith-based and secular grantees, and that the issue must be addressed "given the current push to expand the use of public dollars for faith-based welfare programs."

The report contained contradictory findings on the issue of reporting requirements. It noted that monitoring of public funds for faith-based groups is difficult because they "appear to operate in a more informal manner." On the other hand, it said faith-based groups cite paperwork as a barrier to participation in federal programs.

In a panel discussion sponsored by the Roundtable in Washington last week, two factors contributing to tracking and accountability difficulties emerged: the lack of a common definition of "faith-based organization" and the use of "intermediaries" to distribute funds. Representatives of faith-based centers in five federal agencies (Health and Human Services, Labor, Housing and Urban Development, Education and Justice) speaking at the panel all spoke about increased use of intermediaries as a way to get funds to faith-based groups.

The intermediary issue will likely become increasingly important as the administration moves to implement charitable choice through the regulatory process. Without adequate oversight and reporting from sub-grantees of intermediaries, it will be difficult to prevent mixing religious activities with government funded services, or use of public funds for inherently religious activities.

The Roundtable is a partnership of the Rockefeller Institute for Government, the George Washington University Law School and Search for Common Ground. The report is available on the [Roundtable website](#).

## House Passes Bill to Revoke Exemption for "Terrorist Support Organizations"

On October 16 the House passed [H.R. 5603](#), a bill that allows the Internal Revenue Service to suspend the tax exempt status of any group that is designated as a terrorist organization by Executive Order. Contributions to these groups would not be deductible. The bill also suspends due process rights of groups, stating that "no organization or other person may challenge a suspension....in any administrative or judicial proceeding...". (See Section 1(a)(4).) An identical bill, [S. 3082](#) has been introduced in the Senate by Finance Committee Chair Max Baucus (D-MT) and Ranking Member Charles Grassely (R-IA). The Senate is expected to take up the bill when it returns after the elections. OMB Watch is researching the due process issues involved in this legislation.

### PUBLIC INTEREST GROUPS SUE GOVERNMENT FOR RECORDS ON PATRIOT ACT

ACLU and three other public-interest groups filed suit against the Justice Department last week seeking disclosure of information on its use of the PATRIOT Act Congress passed last year. The suit was filed after the Justice Department failed to respond to a Freedom of Information request, asking for statistics on how many times the government had used its expanded wiretapping authority.

## Stealth PAC Amendments Become Law

Congress approved a [compromise bill](#) just before its fall recess exempting state and local PACs from reporting requirements under the Stealth PAC law of 2000 and requiring data from reports to be made available on the Internet in a searchable format. President Bush signed the bill into law a week later.

The new law is designed to avoid duplicative reporting for PACs that work solely on state or local elections and file reports with state or local government, those whose reports are made public and those PAC's which federal candidates do not control and in which federal candidates do not "materially participate." The exemption for these groups, many of which were unaware of the law and out of compliance, will date back to the effective date of the law in 2000.

The public will have dramatically improved access to information on soft money expenditures by PACs involved in federal elections as a result of improved disclosure requirements. The bill requires these PACs to report the date and purpose of expenditures of \$500 or more and the date of each contribution of \$200 or more. If contributions or expenditures exceed \$50,000 in a calendar year the reports must be filed electronically. As of June 30, 2003, the IRS is required to make this information available on the web within 48 hours of filing. The database of reports must be searchable by a wide variety of factors, including name, state, zip code, general purpose and names of directors. It must also be downloadable.

A detailed explanation of the new law is available from the [Congressional Joint Committee on Taxation](#).

## Church Based PAC Formed

"Margin of Victory," a new political action committee dedicated to turning out Christian voters, has been formed as a political committee exempt under Section 527 of the Internal Revenue Code, which governs PACs. The PAC's goal is to mobilize Christian voters and "challenge pastors to educate and call their congregations to elect Godly leaders to Congress." Margin of Victory is sponsored by [America 21](#), a 501(c)(4) organization "whose Mission is to educate, engage, and mobilize Christians to influence national policy at every level." The effort is a response to the defeat of legislation in the House that would have allowed religious congregations to endorse candidates and spend money on partisan campaign activities.

At its news conference announcing the PAC, the group took issue with guidance for religious groups published by the IRS in July, which said praise or criticism of candidates can, in some circumstances, fall into the category of prohibited support or opposition. They agreed with the IRS that congregations cannot explicitly endorse candidates or make campaign contributions.

For more background see our [article on church electioneering](#) and [IRS Publication 1828, Tax Guide for Churches and Religious Organizations](#).

## Report Shows Bush Administration "Hostile" to Regulation

The Bush administration showed a "pre-determined hostility" toward regulation in reviewing, and in some cases weakening, environmental protections adopted under President Clinton, according to [a new report, entitled "Rewriting the Rules,"](#) released by Sen. Joseph Lieberman (D-CT), chairman of the Governmental Affairs Committee.

On President Bush's very first day in office, his chief of staff, Andrew Card, issued [a memo directing that agencies halt all regulatory activity](#) pending a review of Clinton-era rules by Bush political appointees. After sifting through thousands of documents turned over by the administration, committee staff found that this review was "characterized by a troubling lack of respect for long-established regulatory procedures, an attempt to give short shrift to public input when possible, and to discount the science or record that supported the rules under review."

The report gives particular attention to three rules "subjected to the administration's second-guessing":

- **A rule protecting roadless areas in national forests.** The administration chose not to defend this rule against a court challenge; instead, documents show it was content "to let (the) Judge take (the) rule down," according to the report. This conveniently allowed the administration to avoid responsibility for revoking it.
- **A standard for arsenic in drinking water.** The Bush administration appeared poised to weaken this rule, which underwent years of scientific review. Indeed, documents show the Office of Management and Budget pressured EPA to relax the standard. Ultimately, however, the administration decided to uphold the Clinton standard, wasting valuable time and resources in the process. This decision came after a political firestorm surrounding the administration's review, along with an additional study by the National Academy of Sciences, which again demonstrated the need for the rule.
- **A rule restricting hard rock mining on public lands.** The administration initially suspended this rule -- a decision "not based on documented substantive analysis," according to the report -- and ultimately repealed parts of it, permitting unwarranted environmental and health risks.

For more, see the Natural Resources Defense Council's comprehensive [report on the Bush administration's rollback of environmental rules](#), which, like the Lieberman report, is called, *Rewriting the Rules*.

## Anti-Regulatory Studies Found Deceptive

A series of influential studies purporting to show that federal regulation is broadly irrational are based on data that is highly misleading and frequently manufactured to fit a preconceived point of view, according to an investigation by Richard Parker, a law professor at the University of Connecticut, who [presented his findings October 17 during a conference of the American Bar Association](#).

These studies are familiar to anyone who has followed the debate over regulatory effectiveness. They are frequently invoked in calls for process "reforms" -- both legislative and administrative -- designed to limit regulatory output and elevate the use of [monetized cost-benefit analysis](#). Yet it turns out, they are frauds. Specifically, Parker takes aim at:

- **A 2000 study by Robert Hahn**, co-director of the AEI-Brookings Joint Center for Regulatory Studies, which concluded, "using the government's numbers," that less than half the major rules issued between 1981 and 1996 pass a cost-benefit test (costs minus monetized benefits). Yet Hahn's study did not disclose the names of these rules, making the findings unverifiable.

"Merely getting the list of rules -- and the corresponding tabulation of costs and benefits -- required months of supplication," Parker writes in a summary paper distributed at the conference. "When I finally obtained the spreadsheet, I immediately made a startling discovery. Forty-one of the 136 rules in his database -- fully 31 percent of all the rules -- are assigned a zero benefit." This includes a rule requiring tankers to devise response plans for large oil spills; a rule requiring manufacturing facilities to publicly disclose toxic releases; and three rules to limit toxic pollutants in drinking water.

Clearly such rules carry significant benefits, many of which are difficult, if not impossible, to monetize. Yet according to Parker, "It turns out that Hahn, with a few narrow and limited exceptions, has assigned a zero value to any benefit which the government's regulatory impact assessment [RIA] does not quantify and monetize. Hahn, amazingly, also zero-values even benefits that are quantified and monetized in an agency RIA, unless they happen to fall into one of his select categories of recognized benefit -- even as he insists that he is using the government's numbers."

For instance, EPA promulgated a rule in 1992 to protect 3.9 million agricultural workers from pesticides, which the agency estimated would yield substantial benefits, including the prevention of serious developmental defects, stillbirths, and acute pesticide poisoning. Yet Hahn's study only recognized the health benefits of "reducing the risk of cancer, heart disease, and lead poisoning." As a result, Hahn scores EPA's rule as having no benefit.

- **A 1995 study by Tammy Tengs and John Graham**, current administrator of OMB's Office of Information and Regulatory Affairs (OIRA), which found that 60,000 additional lives could be saved each year if the government redirected resources from current regulatory interventions to more "cost-effective" options. Graham has provocatively labeled this "statistical murder."

Yet Parker points out the logical fallacy of this claim, which assumes a fixed regulatory budget where a dollar spent on Risk A is a dollar less for Risk B. "In fact, there is no such budget, and no such tradeoff," Parker writes. Even so, Parker points out that Graham's hypothetical reallocation encourages the adoption of two interventions -- influenza vaccines for all citizens and continuous (vs. nocturnal) oxygen for hypoxemic obstructive lung disease -- that alone account for more than 42,000 of the 60,000 additional lives saved.

"Are we to believe that the nation's failure to [adopt these interventions] is somehow related to the allegedly excessive regulation of benzene or other interventions at the cost-ineffective bottom of his list?," Parker asks. "If not, where is the statistical murder?"

Ironically, "Graham's re-allocation works by finding one or more instances of under-regulation to match every instance of over-regulation," Parker writes. "But under-regulation, of course, is not the lesson that regulatory critics choose to draw from the Graham study."

Another central point of Graham's study is that toxic regulation is frequently cost-ineffective when compared to non-toxic related interventions. Yet amazingly, Graham's own data suggests the exact opposite. Parker points out that only 4 percent of expenditures on toxic regulations exceed \$8 million per life saved, while 63 percent of the

funds devoted to non-toxic interventions exceed that threshold.

- **A 1987 study by John Morrall, a senior economist at OIRA**, which presented a table of 44 regulations and concluded that one-third cost more than \$100 million for every life saved. Yet like the work by Hahn and Graham, Morrall's study is deeply misleading.

Morrall, like Hahn and Graham, relies on agency cost-benefit data. But Morrall revises these estimates "whenever he disagrees with them -- often by several orders of magnitude, and always in the direction of higher costs and lower benefits," according to Parker. Moreover, Morrall offers no supporting documentation for his changes, making his findings impossible to replicate. Indeed, Morrall admitted to Parker that his assumptions and calculations are "scattered around in filing cabinets."

"All three studies rely on undisclosed data and non-replicable calculations," Parker concludes. "They misrepresent ex ante guesses about the costs and benefits of future or hypothetical regulations as actual measurements of 'the' costs and benefits of regulation. They grossly under-estimate the value of lives saved, or the number of lives saved, or both."

Parker's complete findings will be revealed in a forthcoming 90-page paper.

## **Rahall, Dingell Express Concern with Bush Environmental Rollbacks**

[A letter to President Bush](#) from leading congressional Democrats blasts the administration for undermining and dismantling the [National Environmental Policy Act \(NEPA\)](#), considered the Magna Carta of environmental law.

Signed by President Nixon in 1969, NEPA requires agencies to assess the social, economic, and environmental impacts of proposed federal actions by writing a detailed statement called an Environmental Impact Analysis. This statement must also present alternatives to actions that might harm the environment and be subjected to public scrutiny and input.

The administration is [proposing legislation to waive NEPA provisions](#) as part of its "Healthy Forests Initiative," denying public comment on timber cutting proposals, as well as the opportunity to challenge them in court. Likewise, the administration's 2001 energy plan seeks to expedite oil exploration at the expense of environmental review.

Yet the administration "not only seeks to circumvent NEPA through legislative proposals which at least allow for a dialogue between the Administration, Congress and the public, but also through administrative directives and court proceedings," write Reps. Nick Rahall (D-WV) and John Dingell (D-MI), the top Democrats on the House Resources Committee and the Energy and Commerce Committee respectively, in their letter to the president. "These actions individually remain below the radar of the American people, but as a whole they chip away at NEPA to the point where this law would exist in name only under your administration."

For instance, the administration suspended regulations for ecological sustainability in the National Forest Management Act (NFMA) in the spring of 2001. Rahall and Dingell see this as the first step toward dismantling environmental review of projects in all National Forests, noting that the chief of the Forest Service has already approved a number of other changes to NFMA, the most significant of which would categorically exclude forest management plans from NEPA. "As NEPA requires the federal government to consider alternatives before implementing actions, by removing such requirements you would be encouraging a dictatorial and blind approach to managing America's natural resources," the congressmen write.

Meanwhile, a federal court recently rejected a Justice Department argument that NEPA doesn't apply to oceans beyond three miles of the nation's shorelines. Yet notes from an August meeting at the White House Council on Environmental Quality, which has formed an [NEPA task force](#) to study various aspects of the law, indicate that the administration "is considering stripping NEPA protection from the oceans," according to Rahall and Dingell, constituting "the single greatest environmental rollback ever."

"This Administration's closed-door approach to governing has already sparked significant distrust and controversy," the congressmen note. "Instead of using NEPA's public participation requirements to help dispel this distrust, the Administration's attacks on NEPA promote even more secrecy and back-room deals."

## **Ideology Trumps Science at HHS, Letter Charges**

The [Department of Health and Human Services \(HHS\)](#) is suppressing scientific information on contraception and abortion, and apparently increasing audits of nonprofit grantees that disagree with the administration's "abstinence-only" program, according to a [recent letter](#) from Rep. Henry Waxman (D-CA) and a group of House Democrats to Tommy Thompson, secretary of HHS.

"A growing number of cases provide evidence that actions directly affecting the public health are being driven by ideology rather than science," the letter charges, referencing [HHS's efforts to stack scientific advisory committees](#) with conservative ideologues and industry allies, including, most recently, [a panel on childhood lead poisoning](#).

Waxman's letter specifically cites the removal of information from the [National Institutes of Health \(NIH\)](#) web site that debunks a commonly held myth that abortion increases the risk of breast cancer. Congressional representatives wrote to Thompson on July 9 seeking an explanation, but have thus far received no response.

In addition, the [Centers for Disease Control \(CDC\)](#) has removed information from its web site about educational programs

that have proven effective in reducing risky behavior among adolescents, as well as fact sheets regarding the effectiveness of condoms in preventing sexually transmitted diseases.

Meanwhile, HHS appears to be using financial audits as a political tool to harass nonprofit organizations receiving HHS money that provide comprehensive sex education and do not subscribe to the administration's "abstinence only" program, according to the letter, which asks for more information on the audits. "To our knowledge, no 'abstinence only' organizations are being audited," the representatives write.

The letter also refers to recent reports that the Bush administration "wants to appoint as Chair of the FDA's important Reproductive Health Drugs Advisory Committee a physician whose most notable contribution to the field of reproductive health is a book recommending the reading of specific Biblical texts as treatments for various conditions, and who is reported to have refused to prescribe contraceptives for unmarried women."

Administration officials defended their actions in [a recent article in the Washington Post](#).

## **FDA Commissioner Finally Confirmed**

Almost two years after President Bush took office, Mark B. McClellan -- a top health policy adviser to the president and brother of White House spokesman Scott McClellan -- [has been confirmed](#) to serve as commissioner of the [Food and Drug Administration \(FDA\)](#).

Unlike many [Bush appointees who are now responsible for regulating former employers](#), McClellan has never worked for the pharmaceutical industry. This helped secure the support of Sen. Edward Kennedy (D-MA), chair of the [Senate committee with jurisdiction over the nomination](#), who reportedly insisted on independence.

Previously, McClellan served as deputy assistant secretary of the Treasury in the Clinton administration, and on the National Cancer Policy Board of the National Academy of Sciences. He has a medical degree from Harvard, a doctorate from the Massachusetts Institute of Technology, and his specialty is reportedly in health economics, specifically the costs and benefits of new medical technologies.

The FDA employs more than 9,000 people, regulates almost a fourth of the U.S. economy, including the pharmaceutical industry, and deals with highly politicized issues, including whether to allow marketing of RU 486, the "abortion drug," how to deal with bio-terrorism, and what level of rigor to employ in reviewing new drug applications.

Many of these issues were raised at his confirmation hearing, but McClellan was generally noncommittal and adopted a conciliatory tone, saying he would listen to everyone's point of view. In response to industry complaints that FDA is too slow in approving new drugs, McClellan promised to work with industry to improve the process, offering no specific plan.

## **A Call for Action Against Secrecy**

Concerned about the current administration's preference for policies of secrecy and information restriction OMB Watch recently issued a working paper entitled ["The Bush Administration's Secrecy Policy: A Call to Action to Protect Democratic Values"](#) detailing the growth of secrecy in government, its impact and current public opinion on increased secrecy. The paper concludes with a call to action that emphasizes the need to build a coordinated campaign that not only addresses the increased secrecy, but also promotes strengthening the public's right-to-know.

Comments, reactions and feedback to this working paper are welcome. The paper is considered a working draft as we recognize it does not fully cover the waterfront of issues concerning access to government information. For example, it does an inadequate job of covering national security issues. We assume this will be corrected over time with additional input.

In this context, we would like input on:

- Whether you agree that this is an important issue, and, if so, how important it is compared to other issues.
- Any additional examples of secrecy or restrictions to the public's right-to-know (not identified in the paper) that should be included in building the mosaic.
- Your ideas for what a campaign to highlight secrecy and advance the public's right-to-know might look like and any specific next steps you would suggest.
- What hurdles should we expect in moving forward with this type of initiative, and how can we get past them.

To post your comments to these questions, send a message to [ombwatch@ombwatch.org](mailto:ombwatch@ombwatch.org).

After the November elections, a revised draft should be posted to reflect comments we receive and the outcomes of the elections.

## Judge Orders White House to Turn Over Energy Task Force Documents, Again

In one of several lawsuits brought against the Bush administration for its failure to disclose key documents relating to its energy task force, a federal judge ordered the Bush administration to turn over the documents for the second time; the same ruling was previously made in August, according to the [Washington Post](#).

Since the Bush administration failed to comply with the first order, U.S. District Judge Emmet G. Sullivan gave its lawyers until November 5 to produce the documents, which include membership rolls and meeting schedules of the National Energy Policy Development Group, chaired by Vice President Dick Cheney.

The [Sierra Club](#) and [Judicial Watch](#) brought the case over a year ago alleging that the administration improperly met with private energy industry officials and largely excluded environmental groups while forming the country's energy policy. The Bush administration is countering with the argument that the separation of powers doctrine protects those documents from outside review, and that handing over the papers might reveal the administration's internal, deliberative process, according to the [Washington Post](#). When informing the court that government attorneys might need more time, Shannen Coffin, a lawyer representing the Bush administration, reportedly admitted to Judge Sullivan that government attorneys had not conducted a document review of the office of the Vice President, a statement that surprised the judge because Coffin was asserting that the documents were privileged while also claiming not to have seen them. Coffin quickly backpedaled and claimed that they had done enough review to know that their arguments were correct, the Post article notes.

The [General Accounting Office \(GAO\)](#) -- the investigative arm of Congress -- also filed suit against the Bush Administration for the documents earlier this year, and is still awaiting a decision in its case. In another related case, a D.C. federal district court's February 21 ruling upheld the public's right to access government information by ordering the [Department of Energy \(DOE\)](#) to hand over documents to the [Natural Resources Defense Council](#) that relate to the workings of Cheney's energy task force. [For more, see this previous story in the OMB Watcher.](#)

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