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CONGRESS

Normally, in the Senate, controversial bills on the calendar (and at the desk) pile up throughout the year, as risk-averse senators edge away from potentially career-ending floor fights.

There are, however, two times a year when the realization that “this is it” unsticks legislation that has become stuck. The first occurs in the days before Congress goes on its month-long summer recess. The second, in the days before it adjourns for the year.

The first “high-activity period” has come and gone, and it has produced two major public laws:

- ♦ the ethics/ “lobby reform” package; and
- ♦ the minimum-wage increase.

The second bill would mandate a phased-in two dollar per hour increase in the minimum wage, coupled with more than \$5 billion in tax cuts demanded by Republicans. In the process, the price of goods and services purchased disproportionately by the poor will increase.

But, for fueling outright cynicism, nothing beats the ethics “lobby reform” legislation, which will do for legislators what federal energy policy has done for gasoline: it will dramatically increase the cost of buying them.

ETHICS/LOBBYING BILL ENACTED

The ethics “lobby reform” package passed the House by a 411 to 8 vote on July 31, and was approved by the Senate by 80-to-17 later in the week—overcoming a filibuster by Senate Steering Committee Chairman Jim DeMint (R-S.C.) that required supporters to garner 67 votes.

First, the basics (which we will outline briefly because they have been reported elsewhere): The ethics package would

- ♦ require reporting of “bundling” (i.e., combining other people’s contributions into a handful of checks for the candidate) in excess of \$15,000 per six-month period;
- ♦ prohibit members from accepting meals or gifts from lobbyists;
- ♦ severely curtail perquisites, such as discounted air transportation;

- ♦ deny floor access, gym access, and parking privileges to former senators and speakers who have become lobbyists;
- ♦ establish searchable databases to allow an easier correlation between contributions and political “favors”;
- ♦ create a criminal penalty for members who do not make full and faithful financial disclosures;
- ♦ require departing members to disclose employment negotiations; and
- ♦ not include two-year “revolving-door” prohibitions on former legislators and staff that were in an earlier version, thereby leaving in place a more modest doubling of previous restrictions on direct lobbying.

None of this will do a great deal to curtail corruption in Washington, although Congress has finally been forced into imposing a little pain on itself —meaning, for instance, that prominent senators will now have to be violated by airport security, along with everyone else.

But, for all of the Sturm und Drang over the issue, it’s not clear that “secret bundling” has ever been a problem on the American political scene. As a matter of fact, one of the central motivations for bundling is that various levels of successful bundling can win the bundlers various amounts of accolade—and access-related rewards from the two major political parties—a fact that is trumpeted endlessly by the parties and the bundlers themselves.

This system of bundling rewards set up by the parties will be even more important now that it no longer will be legal to court time with a legislator by taking him or her to lunch. Hence, the entry-level cost of “quality face time” with a senator or congressperson will now be the \$1,000 per person PAC cost of the breakfasts, lunches, sports outings, receptions, and other “special events” being hocked with relish by the various congressional and senatorial campaign committees.

And the cost of having significant “quality face time” will be the ability to host a fund-raiser for a legislator, preferably in one’s Capitol Hill townhouse, and bundle the proceeds.

True, Jack Abramoff luxuriated in the company of the famous and powerful in his Washington restaurant, Signatures. Ironically, however, the ethics bill has now raised the cost of buying legislators to the point where only the Jack Abramoffs can afford to play.

This is not to say that the ethics bill could not have been even worse than it was. Before the Senate moved to delete the provision, the Senate version would have required advocacy organizations to report on the cost of communicating with the public on

legislative issues (or so-called grassroots communications). This provision was deleted by a narrow vote on the Senate floor.

In addition, “earmark” provisions originally sponsored by Senator John McCain (R-Ariz.) would have defined “earmark” so broadly that pro-life, pro-gun, and anti-regulatory provisions favored by business and conservatives could have been knocked off conference reports without recourse. Fortunately (and it’s unfortunate that it’s fortunate), the final bill incorporated the House’s anemic “earmark reporting” language, rather than the tougher provisions pushed in the Senate by Steering Committee Chairman DeMint—or worse.

As a result of all this, the battle over the status of “earmarks” has become a political Kabuki dance:

- ♦ The House has backed away from explicit legislative appropriations earmarks, while legislators called all over town to make sure that generalized appropriations were spent on their pet projects.
- ♦ Meanwhile, the House, as usual, churned out virtually all of its appropriations bills before the August recess (12), while the Senate, as usual, produced almost no appropriations bills before August (only one bill)—all of which may be irrelevant, because virtually every House-passed bill prompted a veto threat because, *inter alia*, of all the money that was put in for the “secret” earmarks that supposedly no longer exist.
- ♦ As a matter of fact, so politically embarrassing were the budget overruns that, even before the Senate had an opportunity to put in “its two cents,” the Democratic leadership was vigorously jockeying to force children’s health insurance increases and No Child Left Behind legislation to the front of the “veto line.” Thus, they hoped to shift attention from Democratic “pork” to the Bush administration’s “hatred of children.”
- ♦ Appropriations subcommittee chairpersons and ranking members fumed, of course, because of the perceived diminution in their power to hand out favors. One ranking member who, at the outset of the process, had not even known what an “unlegislated earmark” was, threatened retaliation against conservatives.
- ♦ But they need not have feared that anything would happen, other than to force “underground” the decision-making process concerning the dispensation of money in the public coffers.
- ♦ Thus, the only thing this sordid exercise may have accomplished was to move the appropriations process from honesty and transparency to dishonesty and secretiveness.

- ♦ And, incidentally, the other “landfill of pork”—the six-year highway bill—also recently came to public attention when a major interstate bridge collapsed and it was revealed that huge amounts of highway money were unavailable for projects such as keeping bridges from collapsing because House Infrastructure and Senate Environment Committee members were even less capable than appropriators of saying “no” to every special interest in D.C.

While the status of “earmarks” is hardly more than a comic interlude, the ethics/lobbying bill did—at the behest of “pork-masters” like Minority Whip Trent Lott (R-Miss.)—outlaw the only Senate procedure that had actually been effective in halting the creation of wasteful new programs: the “hold.”

For all of its demonization, the “hold” is little more than a request for notification before entering supposedly “unanimous” consent requests waiving the Senate rules and limiting senators’ rights under the Senate rules.

And it is revealing that, while the Senate’s “Lotts” had first chafed about the “hold” two years ago, when it was primarily a tool by conservative Republicans against mainstream Republican committee chairpersons, it made little difference to them that it is now Democratic bills that are threatened by this procedure.

So, as a result of the ethics bill provision, a senator will now have to publish a statement in the *Congressional Record* within six days to stop the Senate rules from being waived by an agreement that must and supposedly does reflect the unanimous consent of all senators.

What difference will this make? The answer is not entirely clear. It is certainly possible that DeMint and other conservatives who constantly use the “hold” will

- ♦ use “holds” less often as a result of the new rule’s impositions; or
- ♦ simply start submitting *Record* statements, in compliance with the new rule; or
- ♦ submit “blanket holds” on every bill on the Senate calendar, thereby making the new rule meaningless.

Whether the rule has its intended effect of removing obstacles to the creation of new programs, it is certainly an indictment of Lott & Co. that they sought to curtail the rights of the minority at a time when they were in power—and lacked the foresight to understand that that situation might not always be the case.

ENERGY BILLS ADVANCE

At press time, Congress was preparing to conference two competing versions of federal energy legislation. The House package, culled from bills from a half-dozen committees, would

- ♦ authorize funds for research on capturing carbon emissions from refineries and power plants;
- ♦ create tax incentives for alternative fuel production and energy efficiency;
- ♦ pay for those tax incentives by repealing approximately \$16 billion in tax breaks earlier extended to oil companies by the Republicans; and
- ♦ establish new energy-efficiency standards for appliances and structures.

The Senate bill contains a mishmash of comparable provisions—including another ethanol incentive—but, in addition, sets new Corporate Average Fuel Economy (“CAFE”) standards.

House Speaker Nancy Pelosi (D-Cal.) had barred the CAFE issue from coming to the House floor—for fear of fracturing her badly divided caucus. Instead, Pelosi presumably hopes that the conference will do her “dirty work”—i.e., presenting pro-automotive Democrats like John Dingell (D-Mich.) with a take-it-or-leave-it conference report.

Of course, most of the provisions in both versions are window dressing, compared to the controversy over what to do about CAFE standards—which have, with some administrated exceptions, been frozen in place since an increase was killed in the Senate in 1990, when it was offered as part of an aggressive, but doomed, legislative package pushed by Democratic Leader George Mitchell (D-Maine.).

The CAFE provisions come at a particularly interesting point in the debate over “global warming” and automotive safety.

The first issue is the rather surprising resurfacing of well-known data showing that small cars almost double the risk of death over sport utility vehicles (“SUVs”)—and increase by more than 50% the risk of death from even a mid-size car. According to the Insurance Institute for Highway Safety:

- ♦ there are 108 driver deaths per million vehicles in the case of small cars;
- ♦ there are 70 driver deaths in the case of mid-size cars;
- ♦ there are 67 driver deaths in the case of large cars; and

- ♦ there are 55 driver deaths in the case of SUVs.

None of this information is exactly news. Senate opponents of tightened CAFE standards have been aware of the 2002 National Academy of Sciences study to this effect (and of other studies)—and were prepared, at least in earlier years, to make CAFE adjustments contingent on no significant increases in highway fatalities.

Nevertheless, as Congress edges closer to actually “pulling the trigger” on CAFE standards, one would think that the congressmen who have pushed for a primary seatbelt law would think twice before mandating an automotive change that would double the risk of death.

But the fatality statistics are not the only issue facing CAFE proponents:

In a move little noticed in the mainstream press—but much discussed on conservative media—the National Aeronautics and Space Administration’s Goddard Institute for Space Studies’ (“GISS”) politically driven director, James Hansen, was recently forced to dramatically revise GISS’s assessment of the hottest years since the late 1800s, when readings began.

This GISS did because a NASA error in meshing two sets of temperature data was discovered by a retired business executive in Toronto.

According to the revised figures, the hottest year was 1934, not 1998, as previously publicized. Also, according to the new numbers:

- ♦ the third hottest year, after 1934 and 1998, was 1921;
- ♦ rounding out the top-10 hottest years were, respectively, 2006, 1931, 1999, 1953, 1990, 1938, and 1939; and
- ♦ over half of the hottest 15 years (8) occurred before the sharp increase in carbon dioxide pollution.

The major newspapers, when they covered the revisions at all, did so to ridicule those who believed NASA’s reworking the statistics was significant. The *New York Times*, for example, on page 19, chose to emphasize that it was just a “Quarter-Degree Fix” and observed that “[e]veryone appears also to agree that too much attention is paid to records. . .”—a consensus that didn’t seem to develop until after Al Gore used the inaccurate “hottest years on record” figure to advertise his alarmist Academy Award-winning film.

The *Times* also characterized as “statistically meaningless” the 0.036 degrees Fahrenheit by which 1934 now leads 1998—although it was not characterized as

“statistically meaningless” when 1998 had been erroneously viewed as the hottest year by even less of a margin.

And—for what it’s worth—this jiggering comes:

- ♦ on the heels of a January-to-June period where temperatures in the “lower 48” were roughly two degrees lower than last year; and
- ♦ at a point when—believe it or don’t believe it—the *Farmer’s Almanac* is predicting an unusually severe winter.

The point is not to argue whether “global warming” is real—or what causes it—but, rather, to suggest that the revisions potentially change both the legislative and political dynamics of environmental issues.

House Speaker Nancy Pelosi has made no secret of the fact that she intends to parlay “climate change” into a major issue during the upcoming election cycle. And she has vigorously sparred with the formidable Dean of the House, Congressman John Dingell (D-Mich.), in order to make it so.

But, suddenly, the Republicans have been handed a “sound bite.” And, conservatives had hoped, if this made Dingell a little more tenacious and George Bush a little more willing to wield his “veto pen,” perhaps this could change the CAFE debate.

Which brings us to one final consideration: With elections coming up that could define the American political landscape for a generation, Democrats walk a tightrope when they push anti-business legislation.

Clearly, they have to keep one eye on their base: organized labor (which contributes nine out of ten dollars to Democrats) and the environmentalists.

But businesses—far from being GOP stalwarts, as they often are portrayed—are actually the “swing” supporters, frequently going with the party they perceive to be the winners. Thus, during the first two quarters of this year:

- ♦ securities and investment concerns contributed 56% of their money to Democrats;
- ♦ advertising, marketing, and management firms made 63% of their donations to Democrats;
- ♦ lawyers and law firms of all types went with Democrats 78% of the time; and
- ♦ the hodgepodge of “miscellaneous” businesses supported Democrats a whopping 75% of the time.

Former Republican House Speaker Newt Gingrich had tried to curtail this business fickleness by placing GOP loyalists into key positions in D.C. trade associations. But, with the previously mentioned ethics “lobby reform” bill having outlawed this practice, Republicans will have to content themselves with a business community that is hedging its bets.

In fairness, ultimately—sometime before November 2008—the dynamic of business giving will change somewhat. A Republican nominee will emerge from the pack—and, suddenly, there will be someone other than Hillary Clinton who is perceived as having a very good chance of winning the presidency. When this happens, business coffers will open to that person.

But, even on the eve of the presidential election, the apportionment of business giving will be governed, to some extent, by the perceived outcome—assuming, of course, that the corporate community does not view the election as “tax and spend” Armageddon.

So all of this has to go into the calculus of the Democratic legislative agenda. And Democrats appear to have concluded that they would best be served by a climate in which business is “sorta” scared of them, but not “very” scared. Hence, for instance, the studied efforts to paint large corporations as Democratic allies in the effort to stem “global warming.”

It is a political marriage that is doomed to problems. But how many problems there will be will depend on whether Democrats are willing to declare a “regulatory détente” in the same way they declared a “gun détente” a couple of years ago.

THE CONGRESSIONAL AGENDA FOR SEPTEMBER AND OCTOBER

These are some of the issues that remained on Congress’s plate when it returned from the August recess:

SPENDING: As of the beginning of September, the House had passed 12 of its annual appropriations bills. The Senate had passed one. And, despite whining by congressional Democrats that only \$22 billion separated their budget from Bush’s, the administration seemed to be savoring the prospect of vetoing most or all of them—if, for no other reason, to repair fractured relations with the party’s conservative base. Although this is being written well in advance, here’s a prediction: On the very day you read this report, Congress will be considering a “continuing resolution” to fund virtually all the discretionary functions of the government on a stopgap basis.

HEALTH CARE: Presumably by publication time, the first autumn showdown between Congress and the administration—the battle over the “children’s” health program—will have erupted into the season’s first major skirmish.

The House bill would have added \$50 billion (over five years) to the program; and the Senate bill would have increased costs by \$35 billion. The “veto-proof” vote in the Senate was not an insurmountable obstacle to a Bush veto, assuming he threw mainstream Senate Republicans a viable “compromise” on the issue—and assuming that Bush retains any influence at all in Congress.

With states like California playing with universal health care proposals—and with “budget hawks” like Budget Committee ranking member Judd Gregg (R-N.H.) joining liberal Democrat Ron Wyden (D-Ore.) and Republican Robert Bennett (R-Utah) on legislation to require everyone to purchase health insurance—it is becoming clear that the children’s health battle is just the beginning, rather than the end, of the struggle over this issue.

AGRICULTURE: As of the beginning of September, the House had passed a five-year, \$286 billion reauthorization of farm programs, while the Senate had taken no action. As usual, the fight will come down to the question of whether to “do the right thing” and sunset these large counterproductive programs—or to cave into political reality. No one’s betting on “the right thing.”

FLOOD INSURANCE: With recent storms throwing FEMA’s federal flood insurance program \$20 billion into debt, Congress is being pushed from all ends of the political spectrum to do something beyond merely increasing the program’s borrowing limit—a move that arguably will only increase the problem in the future.

The House Financial Services Committee passed a modest bill in July, but critics have argued that any permanent solution will require the following:

- ♦ increasing premiums on five million policyholders;
- ♦ prohibiting homeowners from rebuilding in flood-prone areas;
- ♦ requiring coverage in more areas; and
- ♦ updating building codes.

Even with New Orleans’ debacle looming in the background, this may be more pain than Congress is willing to endure.

THE EXECUTIVE BRANCH

THE FEDERAL COMMUNICATIONS COMMISSION (“FCC”)

Liberal Groups Push for Tightening of Radio Ownership Rules

Dissatisfied with their near-monopoly over broadcast TV, publishing, cinema, newspapers, academia, organized labor, late-night TV, theater, and taxpayer-subsidized public radio, left-of-center groups are chafing that conservatives have made inroads with radio talk shows. And they intend to do something about it.

In a study prepared by a group that ironically is named “Free Press,” the Far Left has crafted a study that skews its sample in such a way as to study only conservative talk radio—and has concluded that conservative talk radio is, amazingly, conservative.

This, it proposes to “cure” by changing the media ownership rules.

Nevertheless, while Washington “studies” are hardly known for their incisive findings or unbiased methodology, this one may be so transparently flawed that it destroys its own political usefulness.

THE STATES

ATTORNEYS GENERAL WEIGH IN ON FACEBOOK, ENERGY DRINKS

Perhaps it was getting boring in Albany, Pierre, and Juneau during the summer doldrums. Or perhaps it is just that 50 ambitious lawyers are savoring the extent to which their former colleague, Eliot Spitzer, parlayed state usurpation of federal issues into a national platform.

Either way, the state attorneys general recently have chimed in on two federal issues:

REGULATION OF THE INTERNET: All 50 attorneys general have moved to push social networking sites like Facebook and MySpace to impose age and/or identity verification requirements—even though Connecticut and North Carolina have balked at legislation to impose that type of mandate on these Internet sites.

Mercifully, legislation introduced at the federal level by Senator Ted Stevens (R-Alaska) and Representative Melissa Bean (D-Ill.) focus less on mandates—and more on “awareness raising.”

The Stevens bill would require schools to educate children on some of the risks of the Internet. And the Bean bill would fund a Federal Trade Commission campaign to alert parents to child-related Internet dangers.

REGULATION OF “ENERGY DRINKS”: But, if regulating the Internet were too small a task, 28 state attorneys general have written to the head of the Alcohol and Tobacco Tax Trade Bureau and have denounced marketing practices for alcoholic energy drinks—which, they claim, target young people.

Connecticut’s aggressively liberal attorney general, Richard Blumenthal, who also took the lead on the Facebook issue, claims that companies are making “outlandish” health-related claims concerning their products.

So as not to leave any stone unturned, the attorneys general also requested a federal investigation.