

**Bush's Most Radical Plan Yet** With a vote of hand-picked lobbyists, the president could terminate any federal agency he dislikes By OSHA GRAY DAVIDSON



Illustration by Steve Brodner

If you've got something to hide in Washington, the best place to bury it is in the federal budget. The spending plan that President Bush submitted to Congress this year contains 2,000 pages that outline funding to safeguard the environment, protect workers from injury and death, crack down on securities fraud and ensure the safety of prescription drugs. But almost unnoticed in the budget, tucked away in a single paragraph, is a provision that could make every one of those protections a thing of the past.

The proposal, spelled out in three short sentences, would give the president the power to appoint an eight-member panel called the "Sunset Commission," which would systematically review federal programs every ten years and decide whether they should be eliminated. Any programs that are not "producing results," in the eyes of the commission, would "automatically terminate unless the Congress took action to continue them."

The administration portrays the commission as a well-intentioned effort to make sure that federal agencies are actually doing their job. "We just think it makes sense," says Clay Johnson, deputy director for management at the Office of Management and Budget, which crafted the provision. "The goal isn't to get rid of a program -- it's to make it work better."

In practice, however, the commission would enable the Bush administration to achieve what Ronald Reagan only dreamed of: the end of government regulation as we know it. With a simple vote of five commissioners -- many of them likely to be lobbyists and executives from major corporations currently subject to federal oversight -- the president could terminate any program or agency he dislikes. No more Environmental Protection Agency. No more Food and Drug Administration. No more Securities and Exchange Commission.

"Ronald Reagan once observed, 'The closest thing to immortality on this earth is a federal government program,'" says Rep. Kevin Brady, a Republican from Texas who has been working for the past nine years to establish a sunset commission. "We need it to clear out the deadwood."

Without many of those programs, however, American consumers, workers and investors would be left to the mercy of business. "This is potentially devastating," says Wesley Warren, who served as a senior OMB official in the Clinton administration. "In short order, this could knock out protections that have been built up over a generation."

Others note that the provision goes beyond anything attempted by conservatives in the past. "When you look at this," says Marchant Wentworth, a lobbyist for the Union of Concerned Scientists, "it's almost like the Reagan administration was a trial run."

The man behind the sunset commission is Clay Johnson, the most influential member of Bush's inner circle whom you've never heard of. The two Texans have been close friends since 1961, when they met as fifteen-year-olds at Andover prep school and later roomed together for four years at Yale. When Bush was elected governor of Texas in 1994, he put the buddy he calls "Big Man" -- Johnson is six feet four -- in charge of all state appointments. Johnson, a former executive at Neiman Marcus and Frito-Lay, refers to Americans as "customers" and is partial to Chamber of Commerce bromides such as "We're in the results business." He is also partial to giving corporate lobbyists a direct role in gutting regulatory protections. One of his first acts in Texas was to remove all three members of the state environmental-protection commission and replace them with a former Monsanto executive, an official with the Texas Beef Council and a lawyer for the oil industry. Overnight, a commission widely respected for its impartiality became a "revolving door between the industry lobby and government," says Jim Marston, the senior attorney in Texas for the nonprofit organization Environmental Defense.

Johnson continued his anti-regulatory efforts in the early days of the Bush presidency, when he helped place industry champions in positions throughout the government. As director of OMB, an obscure but powerful arm of the White House, he has implemented a "Program Assessment Rating Tool" to evaluate federal programs and cut funding to those that are "not getting results." In reality, though, Johnson uses PART to slash government efforts that don't fit the administration's political agenda. This year's budget eliminates twenty percent of the programs that were rated most effective, including efforts to improve the environment and education, and increases funding for programs that received the lowest possible rating -- including an attempt to reduce the number of poor people claiming a low-income tax credit.

The evaluations "are based on the whims of White House budget bean counters," says Gary Bass, executive director of the nonpartisan OMB Watch. "These are meaningless numbers that do nothing but back up preordained political

conclusions."

The Sunset Commission would go even further. The panel -- which will likely be composed of "experts in management issues," according to one senior OMB official -- will enable the administration to terminate entire government programs that protect citizens against injury and death. Consider what America might look like if Reagan had wielded such an anti-regulatory ax twenty years ago. Abolishing the EPA would have increased air pollution, causing tens of thousands of children to develop chronic respiratory diseases. Terminating the National Highway Traffic Safety Administration would have eliminated many protections we now take for granted -- including air bags, child safety seats and automatic seat belts. And getting rid of the Occupational Safety and Health Administration would have forestalled workplace regulations that have prevented illnesses among millions of farmworkers.

Even if such regulations remain on the books, eliminating entire agencies would leave no one to enforce them. "And if there's no cop on the beat, who's going to follow the law?" says J. Robert Shull, senior policy analyst at OMB Watch.

The first hint of Bush's plan to create a commission surfaced only weeks after he won re-election last November. At an economic conference convened by Treasury Secretary John Snow, one panel member made the case for inserting a sunset provision into existing regulations. Such a move would "shift the burden of proof onto the regulations and require us to demonstrate that they're still needed," said Susan Dudley, director of regulatory studies at the Mercatus Center, a free-market think tank based in Washington, D.C.

It's fitting that the first public mention of Bush's plan came from Mercatus. The center's "regulatory studies program" was founded by Wendy Gramm, the wife of former Texas Sen. Phil Gramm and the woman Reagan called "my favorite economist." As a senior official at OMB under the Gipper, Gramm fought hard to eliminate federal regulations. Her most notorious victory came in 1992 when, as chair of the U.S. Commodity Futures Trading Commission, she pushed through a measure exempting companies that trade in energy derivatives from regulation, following an intense lobbying campaign by Enron. Gramm resigned from the commission and accepted a seat on the Enron board of directors, where she was paid \$1.85 million and received donations from the company to support Mercatus. Enron, meanwhile, used its exemption from federal oversight to engage in its infamous accounting fraud that destroyed the company and bankrupted investors.

But such dangers of eliminating regulations have done nothing to slow Bush's drive for a sunset commission. Given its political gains last November, the administration is optimistic about winning approval in Congress. "The stars and the planets are aligned," Johnson recently declared, citing the solid Republican majority in Congress and the need to curb the soaring federal deficit.

But there may be a stumbling block. The commission not only threatens the environment and public health -- it would also violate the constitutional separation of power between Congress and the executive branch, enabling the president to dismantle programs created by lawmakers. "Under the administration's proposal, Congress would relinquish its constitutional power to legislate," says Rep. Henry Waxman, a Democrat from California who has been the commission's most vocal opponent. "Power would be consolidated in the executive branch, and the legislative role would be emasculated."

Republicans already have a plan to counter such concerns. Under a bill expected to be introduced soon, the power to appoint the commission would be given to Congress rather than to the president -- simply transferring the authority from Bush to his GOP allies on the Hill. And if the commission is challenged in court, the administration is likely to drag out the fight until it has firmly established a conservative majority on the Supreme Court.

Either way, opponents consider the commission a serious threat. "The end result," says Waxman, "would be a field day for corporate lobbyists."

(Posted Apr 21, 2005)

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