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# **POLITICS AND SCIENCE IN THE BUSH ADMINISTRATION**

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**PREPARED FOR REP. HENRY A. WAXMAN**

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## EXECUTIVE SUMMARY

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The American people depend upon federal agencies to promote scientific research and to develop science-based policies that protect the nation's health and welfare. Historically, these agencies — such as the National Institutes of Health, the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Environmental Protection Agency — have had global reputations for scientific excellence.

Recently, however, leading scientific journals have begun to question whether scientific integrity at federal agencies has been sacrificed to further a political and ideological agenda. As the editor of *Science* wrote earlier this year, there is growing evidence that the Bush Administration “invades areas once immune to this kind of manipulation.”

At the request of Rep. Henry A. Waxman, this report assesses the treatment of science and scientists by the Bush Administration. It finds numerous instances where the Administration has manipulated the scientific process and distorted or suppressed scientific findings. These actions go far beyond the typical shifts in policy that occur with a change in the political party occupying the White House. Thirteen years ago, former President George H.W. Bush stated that “[n]ow more than ever, on issues ranging from climate change to AIDS research . . . government relies on the impartial perspective of science for guidance.” Today, President George W. Bush's Administration has skewed this impartial perspective, generating unprecedented criticism from the scientific community and even from prominent Republicans who once led federal agencies.

The Administration's political interference with science has led to misleading statements by the President, inaccurate responses to Congress, altered web sites, suppressed agency reports, erroneous international communications, and the gagging of scientists. The subjects involved span a broad range, but they share a common attribute: the beneficiaries of the scientific distortions are important supporters of the President, including social conservatives and powerful industry groups.

The report identifies over twenty scientific issues affected by the undermining of science, including:

- ***Abstinence education***, where performance measures were changed to make unproven “abstinence-only” programs appear effective;
- ***Condom use***, where information about condom use and efficacy was deleted from CDC's web site;

- ***Global warming***, where reports by the Environmental Protection Agency on the risks of climate change were suppressed;
- ***Missile defense***, where Defense Department officials presented misleading information on whether a functional system could be quickly deployed; and
- ***Wetlands policy***, where comments from scientists at the Fish and Wildlife Service on the destructive impacts of proposed regulatory changes were withheld.

Other affected topics include HIV/AIDS, agricultural pollution, the Arctic National Wildlife Refuge, environmental health, lead poisoning, oil and gas exploration, prescription drug advertising, stem cells, substance abuse, drinking water, women's health, workplace safety, and Yellowstone National Park.

Across this wide range of issues, the report identifies the three principal ways in which the Bush Administration has pursued its agenda: by manipulating scientific advisory committees, by distorting and suppressing scientific information, and by interfering with scientific research and analysis.

### **Manipulating Scientific Advisory Committees**

Scientific advisory committees assure that the government hears from the nation's top experts in a particular field before creating policy in that area. The Federal Advisory Committee Act requires that such committees be "fairly balanced in terms of the points of view represented" and requires that advice and recommendations "not be inappropriately influenced by the appointing authority or by any special interest." The Bush Administration, however, has repeatedly manipulated the advisory committee process to advance its political and ideological agenda. Examples include:

- ***Appointing Unqualified Persons with Industry Ties.*** After dropping three national experts in lead poisoning from the Advisory Committee on Childhood Lead Poisoning Prevention, the Department of Health and Human Services appointed several individuals with ties to the lead industry, including a lead industry consultant who had testified that a lead level seven times the current limit is safe for children's brains.
- ***Appointing Unqualified Persons with Ideological Agendas.*** The Department of Health and Human Services nominated as chair of the FDA's Reproductive Health Drug Advisory Committee an anti-abortion activist who recommends that women read the bible for relief of premenstrual symptoms. The appointee's principal credential appears to be his opposition to the abortifacient RU-486. The medical journal *Lancet* described his scientific record as "sparse" and wrote that "[a]ny further

right-wing incursions on expert panels' membership will cause a terminal decline in public trust in the advice of scientists.”

- ***Stacking Advisory Committees.*** The Department of Health and Human Services replaced 15 of 18 members of the key advisory committee to the National Center on Environmental Health. Several of the new members were long-time industry consultants. In response, ten leading scientists wrote in *Science* that “stacking these public committees out of fear that they may offer advice that conflicts with administration policies devalues the entire federal advisory committee structure and the work of dedicated scientists who are willing to participate in these efforts.”
- ***Opposing Qualified Experts.*** The Department of Health and Human Services rejected a widely respected expert’s nomination to a grant review panel on workplace safety after it became clear that she supported rules to protect workers from musculoskeletal injuries, rules that the Bush Administration opposes. The head of the panel called the rejection “directly opposed to the philosophy of peer review, which is supposed to be nonpolitical and transparent.”

### **Distorting and Suppressing Scientific Information**

The public relies on government agencies for accurate scientific information, evidence-based decision making on matters of life and health, and clear explanations of complex technical matters. Under the Bush Administration, however, Administration officials have withheld or skewed important scientific information that conflicts with the Bush Administration’s ideological and political agenda. Examples include:

- ***Including Misleading Information in Presidential Communications.*** After banning research on new lines of embryonic stem cells, President Bush assured the American people that research on “more than 60” existing lines cells “could lead to breakthrough therapies and cures.” In fact, only 11 cell lines are now available for research, all of which were grown with mouse cells, rendering them inappropriate for treating people.
- ***Presenting Incomplete and Inaccurate Information to Congress.*** When Interior Secretary Gale Norton assured Congress that drilling in the Alaska National Wildlife Refuge would not harm the region’s caribou population, she altered or omitted multiple key scientific conclusions prepared by federal biologists at the refuge. One Fish and Wildlife Service official commented, “We tried to present all the facts, but she only passed along the ones she liked. And to pass along facts that are false, well, that’s obviously inappropriate.”

- ***Altering Web Sites.*** As social conservatives campaigned to require women to be “counseled” about an alleged risk of breast cancer from abortions, the National Cancer Institute revised its web site to suggest that studies of equal weight conflicted on the question. In fact, there is scientific consensus that no such link exists; as the head of epidemiology research at the American Cancer Society had concluded previously, “This issue has been resolved scientifically . . . . This is essentially a political debate.”
- ***Suppressing Agency Reports.*** After the White House edited a discussion of global warming in the Environmental Protection Agency’s *Draft Report on the Environment*, agency scientists objected that the draft “no longer accurately represents scientific consensus on climate change,” and EPA chose to eliminate the discussion entirely. A former EPA Administrator in the Nixon and Ford Administrations commented, “I can state categorically that there was never such White House intrusion into the business of the E.P.A. during my tenure.”

### **Interfering with Scientific Research**

The federal government invests \$100 billion annually in scientific research to discover new cures, protect the environment, defend the country, and support other effective policies for the health and welfare of the American people. But instead of encouraging the development and dissemination of objective scientific information, the Bush Administration has repeatedly interfered with scientific research and analysis where political and ideological interests are at stake.

Examples include:

- ***Scrutinizing Ongoing Research.*** Officials of the National Institutes of Health warned HIV researchers to expect increased scrutiny of any research grant requests using the words “gay” or “men who sleep with men.” The Administration has also instituted a new policy at the Agriculture Department requiring scientists to seek approval of any research on “agricultural practices with negative health and environmental consequences.”
- ***Obstructing Agency Analyses.*** The Bush Administration refused to let the Environmental Protection Agency conduct analyses on air quality proposals that differ from the President’s “Clear Skies” initiative. William Ruckelshaus, the first EPA administrator under President Nixon, said of this pattern, “Is the analysis flawed? That is a legitimate reason for not releasing it. But if you don’t like the outcome that might result from the analysis, that is not a legitimate reason.”
- ***Undermining Outcome Assessment.*** The Centers for Disease Control and Prevention used to evaluate sex education programs and identify those

with scientific evidence of effectiveness. After social conservatives complained that none of the programs taught “abstinence only,” the agency ended the “Programs That Work” initiative altogether.

- ***Blocking Scientific Publication.*** The Agriculture Department prohibited one of its microbiologists from publishing or presenting research indicating that industrial hog farming may contribute to antibiotic resistance. The scientist traced the Department’s actions back to communications from industry.

This report describes these and other examples of interference in the scientific process. While in a few cases the Bush Administration reversed itself or admitted error, most of these actions, policies, and appointments remain in effect.

## INTRODUCTION

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Congress created modern administrative agencies to provide technical expertise and analysis in the creation and implementation of public policy.<sup>1</sup> The Food and Drug Administration (FDA), for example, reviews research on foods, drugs, and other health-related products to ensure the safety and effectiveness of these products; the Environmental Protection Agency (EPA) analyzes evidence on environmental risks to protect against threats to the environment and to human health; and the Centers for Disease Control and Prevention (CDC) collects and synthesizes scientific data to combat the spread of disease. Research agencies including the National Institutes of Health (NIH) expand scientific knowledge for the benefit of the American people. These agencies have earned international reputations for scientific excellence.

For the scientific process to succeed, political interference must be minimized. As former President George H.W. Bush remarked to the National Academy of Sciences in 1990:

Science, like any field of endeavor, relies on freedom of inquiry; and one of the hallmarks of that freedom is objectivity. Now more than ever, on issues ranging from climate change to AIDS research to genetic engineering to food additives, government relies on the impartial perspective of science for guidance.<sup>2</sup>

There should be a clear line between the work of scientists, which is to assemble and analyze the best available evidence, and that of policymakers, which is to decide what the nation's response to the science should be. The President has the right to make political appointments to federal agencies and to shape the agenda of agencies within the bounds set by Congress. However, this prerogative should not extend to manipulating scientific research, controlling the advice provided by scientific advisory committees, or distorting scientific information presented to decision makers and the public.

During the current Bush Administration, however, leading scientific journals have raised concerns about the state of scientific independence. The editors of *Nature* have expressed concern that the Administration has made poorly supported decisions “in which scientists would normally play an important advisory role.”<sup>3</sup> The editors of *Scientific American* have objected that on important technical

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<sup>1</sup> Judith Areen et al., *Law, Science, and Medicine*, 397 (1996).

<sup>2</sup> President George H.W. Bush, *Remarks to the National Academy of Sciences* (Apr. 23, 1990) (online at <http://bushlibrary.tamu.edu/papers/1990/90042301.html>).

<sup>3</sup> *Problems with the President*, *Nature*, 499 (Mar. 29, 2001).



issues like global warming and missile defense, the President “has come down against the scientific consensus.”<sup>4</sup> The editor of *Science* has written that the Bush Administration “invades areas once immune to this kind of manipulation.”<sup>5</sup> And even the British journal *Lancet* has warned of “growing evidence of explicit vetting of appointees to influential [scientific] panels on the basis of their political or religious opinions.”<sup>6</sup>

At the request of Rep. Henry A. Waxman, this report examines the treatment of science and scientists in the Bush Administration. It finds that in many instances, the Administration has sacrificed the integrity of the scientific process to further a political or ideological agenda.

## FINDINGS

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The Bush Administration has interfered with science on numerous issues — from abstinence education and breast cancer to workplace safety and the Yellowstone National Park. Most of these issues have one of two features: (1) they are issues like abortion, abstinence, and stem cells that have active right-wing constituencies that support the President; or (2) they are issues like global warming or workplace safety with significant economic consequences for large corporate supporters of the President.

The Administration has deployed a wide range of tactics to skew the science on these issues. These fall into three general strategies.

First, the Administration has repeatedly manipulated the composition of scientific advisory committees. According to *Science*, advisory committees are “the primary mechanism for government agencies to harness the wisdom and expertise of the scientific community in shaping the national agenda for both research and regulation.”<sup>7</sup> The Federal Advisory Committee Act (FACA) requires that federal committees be “fairly balanced in terms of the points of view represented” and provide advice that “will not be inappropriately influenced by the appointing authority or by any special interest.”<sup>8</sup> Yet instead of seeking quality advice from expert appointments, the Bush Administration has:

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<sup>4</sup> *Faith-Based Reasoning*, *Scientific American*, 8 (June 2001).

<sup>5</sup> Donald Kennedy, *An Epidemic of Politics*, *Science*, 625 (Jan. 31, 2003).

<sup>8</sup> Martin McKee and Richard Coker, *The Dangerous Rise of American Exceptionalism*, *Lancet*, 1579 (May 10, 2003).

<sup>7</sup> *Advice without Dissent*, *Science*, 703 (Oct. 25, 2002).

<sup>8</sup> Federal Advisory Committee Act, 5 U.S.C. Appendix 2, §§5(b)(2)–(3).

- appointed people with scant scientific credentials but strong industry ties;
- appointed nonexperts with right-wing ideological agendas;
- stacked advisory committees with numerous pro-industry or ideological appointees;
- opposed the appointment or reappointment of qualified experts, including some of the most respected scientists in their fields, on the basis of political litmus tests.

Second, the Administration has suppressed or distorted scientific information on a wide range of topics. The public relies on government agencies for scientific information and explanations of complex technical matters. Applying a political filter to scientific communications can confuse the public and ultimately lead to cynicism and disillusionment. Unfortunately, the Bush Administration has:

- distorted Presidential communications to the American people;
- provided incomplete and inaccurate scientific information to Congress;
- altered web sites, deleting information that conflicts with Administration priorities or adding unscientific information that supports such priorities;
- suppressed information from agency reports that conflicts with Administration's political or ideological agenda or suppressed the report altogether;
- eliminated key information from communications with international organizations including the United Nations.

Third, the Administration has interfered with scientific research. Federal funding for research and development totals over \$100 billion dollars.<sup>9</sup> The public expects that this research will be conducted independently and objectively. Yet the Bush Administration has:

- obstructed ongoing research by threatening political scrutiny of projects that concern social conservatives;
- obstructed agency research when the results might conflict with the Administration's agenda;
- undermined outcome assessment, both by creating easy-to-reach performance measures for politically favored programs and by eliminating programs that identify effective initiatives that conflict with the Administration's ideological agenda;
- blocked publication of research that may upset an affected industry.

Specific examples of the misuse of science are discussed below.

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<sup>9</sup> National Science Foundation, *Federal Funding for R&D and R&D Plant Continues to Grow in the 21<sup>st</sup> Century* (online at [www.nsf.gov/sbe/srs/infbrief/nsf03321/start.htm](http://www.nsf.gov/sbe/srs/infbrief/nsf03321/start.htm)).

## Abstinence-Only Education

President Bush has consistently supported the view that sex education should teach “abstinence only” and not include information on other ways to avoid sexually transmitted diseases and pregnancy.<sup>10</sup> White House Spokesperson Ari Fleischer has asserted that “abstinence is more than sound science, it’s a sound practice . . . . [A]bstinence has a proven track record of working.”<sup>11</sup>

In pushing an “abstinence only” agenda, however, the Bush Administration has consistently distorted the scientific evidence about what works in sex education. Administration officials have never acknowledged that abstinence-only programs have not been proven to reduce sexual activity, teen pregnancy or sexually transmitted disease.<sup>12</sup> Instead, HHS has changed performance measures for abstinence-only education to make the programs appear successful, censored information on effective sex education programs, and appointed to a key panel an abstinence-only proponent with dubious credentials.

### Performance Measures

Over the past three years, Congress has appropriated over \$100 million in grants to organizations that sponsor abstinence-only education. In November 2000, under the Clinton Administration, HHS developed meaningful, scientifically sound outcome measures to assess whether these programs achieved their intended purposes, including the “proportion of program participants who have engaged in sexual intercourse” and the birth rate of female program participants.<sup>13</sup>

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<sup>10</sup> See, e.g., White House, *President Discusses Welfare Reform and Job Training* (Feb. 27, 2002) (online at <http://www.whitehouse.gov/news/releases/2002/02/print/20020227-5.html>).

<sup>11</sup> White House, *Press Briefing by Ari Fleischer* (Jan. 27, 2003) (online at <http://www.whitehouse.gov/news/releases/2003/01/20030127-2.html>).

<sup>12</sup> D. Kirby, National Campaign to Prevent Teen Pregnancy, *Emerging Answers: Research Findings on Programs to Reduce Teen Pregnancy*, at 88 (May 2001) (“[T]here do not currently exist any abstinence-only programs with reasonably strong evidence that they actually delay the initiation of sex or reduce its frequency”).

<sup>13</sup> 65 Federal Register 69562–65 (Nov. 17, 2000).

In late 2001, however, the Bush Administration dropped these measures and replaced them with a set of standards that does not include any real outcomes. Rather than tracking pregnancy or sexual activity, these measures assess attendance and the attitudes of teens at the end of the education program, including the “proportion of participants who indicate understanding of the social, psychological, and health gains to be realized by abstaining from premarital sexual activity.”<sup>14</sup>

Such standards are not scientifically valid. A 2001 review of scientific evidence concluded that “adolescents’ sexual beliefs, attitudes, and even intentions are . . . weak proxies for actual behaviors.”<sup>15</sup> That is, even if teens pledge to remain abstinent, they may not actually do so. According to a major HHS-funded report, two “hallmarks of good evaluation” in programs designed to reduce teen pregnancy rates are evaluations that “[m]easure behaviors, not just attitudes and beliefs” and “[c]onduct long-term follow-up (of at least one year).”<sup>16</sup> However, the Bush Administration’s standards for measuring the success of abstinence-only programs contain no reports or assessments of actual behavior or health outcomes and do not require any minimum followup period.

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<sup>14</sup> These new measures are:

- Proportion of program participants who successfully complete or remain enrolled in an abstinence-only education program.
- Proportion of adolescents who understand that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy and sexually transmitted disease.
- Proportion of adolescents who indicate understanding of the social, psychological, and health gains to be realized by abstaining from premarital sexual activity.
- Proportion of participants who report they have refusal or assertiveness skills necessary to resist sexual urges and advances.
- Proportion of youth who commit to abstain from sexual activity until marriage.
- Proportion of participants who intend to avoid situations and risk, such as drug use and alcohol consumption, which make them more vulnerable to sexual advances and urges.

U.S. Department of Health and Human Services, *SPRANS Community-Based Abstinence Education Program, Pre-Application Workshop* (Dec. 2002) (online at <http://www.mchb.hrsa.gov/programs/adolescents/abedguidetext.htm>).

<sup>15</sup> D. Kirby, *supra* note 12, at 78.

<sup>16</sup> National Campaign to Prevent Teen Pregnancy, *Get Organized: A Guide to Preventing Teen Pregnancy*, 136 (Sept. 1999) (online at <http://www.teenpregnancy.org/resources/reading/getorgan.asp>).

The result is that the performance measures appear constructed to produce the appearance that scientific evidence supports abstinence-only programs when, in fact, the best evidence does not.

### **“Programs That Work”**

Until recently, a CDC initiative called “Programs That Work” identified sex education programs that have been found to be effective in scientific studies and provided this information through its web site to interested communities.<sup>17</sup> In 2002, all five “Programs That Work” provided comprehensive sex education to teenagers, and none were “abstinence-only.”

In the last year, and without scientific justification, CDC has ended this initiative and erased information about these proven sex education programs from its web site.<sup>18</sup>

### **Appointment to CDC Committee**

The Bush Administration appointed a prominent advocate of abstinence-only programs, Dr. Joe McIlhaney, to the Advisory Committee to the CDC’s Director. This committee is charged with providing advice on “policy issues and broad strategies for promoting health and quality of life by preventing and controlling disease, injury and disability.”<sup>19</sup> Dr. McIlhaney was appointed to this prestigious position despite the fact that in 1995 the Texas Commissioner of Health under then-Governor George W. Bush questioned his professional credibility, writing:

[M]any of the items in [Dr. McIlhaney’s] presentation [on sexually transmitted diseases] are misleading and are quoted incompletely . . . . The only data which was reported in the presentation are those which supported his bias on the topics he addressed. Intellectual honesty demands that he present all the data.<sup>20</sup>

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<sup>17</sup> CDC, *Programs That Work* (archived version online at <http://web.archive.org/web/20010606142729/www.cdc.gov/nccdphp/dash/rtc/index.htm>).

<sup>18</sup> CDC, *Programs That Work* (online at <http://www.cdc.gov/nccdphp/dash/rtc/>) (“Thank you for your interest in Programs that Work (PTW). The CDC has discontinued PTW and is considering a new process that is more responsive to changing needs and concerns of state and local education and health agencies and community organizations”).

<sup>19</sup> CDC, *Secretary Thompson Appoints Nine to CDC Advisory Committee* (Feb. 20, 2003) (online at <http://www.cdc.gov/od/oc/media/pressrel/r030220d.htm>).

<sup>20</sup> Letter from Dr. David R. Smith, Commissioner of Health, to Mr. Tom E. Smith, Executive Director, Medical Institute for Sexual Health (Jan. 23, 1995).

As recently as April 2002, Dr. McIlhaney asserted in congressional testimony that “there is precious little evidence” that comprehensive sexual education programs are “successful at all.”<sup>21</sup> This assertion, however, is inaccurate. A 2001 review found that comprehensive sex education programs that both encourage abstinence and provide information on contraception have been shown in scientific studies to delay the onset of sexual activity and can result in greater use of potentially life-saving condoms and other contraceptives.<sup>22</sup>

## **Agricultural Pollution**

As the potential impact of agricultural pollution has become more widely recognized, agricultural interests have expressed concern about the potential cost of regulation.<sup>23</sup> In testimony before Congress, USDA Secretary Ann M. Veneman promised that her Department would give farmers “the appropriate tools to continue to make the best decisions” on how to protect the environment.<sup>24</sup> However, USDA has instituted tight controls over the publication of information tending to show negative consequences of agricultural practices, attempted to suppress relevant research, and has prevented a senior scientist from speaking about potential adverse environmental consequences from hog farming.

In February 2002, USDA officials told top scientists in the Department’s Agricultural Research Service to seek prior approval on all manuscripts pertaining to “sensitive issues.” According to a Department memo, these issues included:

Agricultural practices with negative health and environmental consequences, e.g., global climate change; contamination of water by hazardous materials (nutrients, pesticides, and pathogens); animal feeding operations or crop production practices that negatively impact soil, water, or air quality.<sup>25</sup>

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<sup>21</sup> Testimony of Dr. Joe S. McIlhaney, Jr., Subcommittee on Health, Committee on Energy and Commerce, *Welfare Reform: A Review of Abstinence Education and Transitional Medical Assistance*, 107<sup>th</sup> Cong., 51 (Apr. 23, 2002).

<sup>22</sup> D. Kirby, *supra* note 12, at 171 (“[A] number of programs that discussed condoms or other forms of contraception and encouraged their use among sexually active youth also delayed or reduced the frequency of sexual intercourse”).

<sup>23</sup> *Iowa’s Tough Stand against Runoff from Agriculture Is Gaining Support; Environment: There Is Growing Recognition That the Fields That Roll across the Heartland Can Create as Much Pollution as a Factory Belching Fumes*, Los Angeles Times (Mar. 19, 2002).

<sup>24</sup> USDA Secretary Ann M. Veneman, Testimony before the Subcommittee on Agriculture, House Appropriations Committee (Feb. 13, 2002).

<sup>25</sup> USDA, *List of Sensitive issues for ARS Manuscript Review and Approval by National Program Staff — February 2002 (revised)* (Feb. 2002).

USDA has used this authority to withhold approval to study important issues. The *Des Moines Register* reported that USDA officials told microbiologist Dr. James Zahn not to publish the results of his study finding antibiotic-resistant bacteria in the air near hog confinements in Iowa and Missouri.<sup>26</sup> He was also not allowed to present his findings at public or private meetings in the spring of 2002, including one at a meeting of the Board of Health in Adair County, Iowa. According to the *Des Moines Register*:

Zahn later found a fax trail showing that information about his planned appearance . . . first passed from an environmental advocacy group to a Des Moines TV station, then to the Iowa Pork Producers Association office. Someone there sent the fax to the National Pork Producers Council in Zahn's building. A pork council worker contacted Zahn's boss . . . to question the appearance, Zahn said. [His boss] then called his superiors in Peoria, who decided Zahn could not speak at the meeting.<sup>27</sup>

Dr. Zahn's supervisor at USDA attempted to justify these denials on the grounds that the studies dealt with human health and therefore fell outside his unit's mission.<sup>28</sup> This claim, however, was groundless. The unit's web site states: "The mission of the Swine Odor and Manure Management Research Unit is to solve critical problems in the swine production industry that impact production efficiency, environmental quality, and human health."<sup>29</sup>

### **Arctic National Wildlife Refuge**

Secretary of the Interior Gale Norton has been a strong supporter of the Bush Administration's efforts to expand oil drilling in the Arctic National Wildlife Refuge (ANWR).<sup>30</sup> In July 2001, Secretary Norton provided information to Congress that distorted her agency's scientific opinion on how such drilling would affect the region's caribou population.

In response to a series of questions from Alaska Senator Frank Murkowski, Secretary Norton wrote to Congress, "I believe that we can ensure that any exploration and development of the oil and natural gas reserves in the 1002 Area

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<sup>26</sup> *Ag Scientists Feel the Heat*, *Des Moines Register* (Dec. 1, 2002).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> USDA Agricultural Research Service, *Swine Odor and Manure Management Research Unit* (online at <http://www.nsrc.ars.usda.gov/>) (emphasis added).

<sup>30</sup> *Departmental Differences Show over ANWR Drilling*, *Washington Post* (Oct. 19, 2001).

of ANWR can be conducted in a manner that is protective of the environment and minimizes impacts on wildlife in the area.”<sup>31</sup>

In her answers, however, Secretary Norton suppressed science produced by biologists within her own agency about ANWR’s caribou. The *Washington Post* reported that scientists from the U.S. Fish and Wildlife Service wrote, and five offices within the Interior Department approved, a draft response to Sen. Murkowski’s questions.<sup>32</sup> Agency data indicated that calving occurred primarily inside area 1002 for 11 of the past 18 years,<sup>33</sup> but Secretary Norton’s final response said that calving occurred primarily outside the area for 11 of the past 18 years.<sup>34</sup>

Secretary Norton also deleted scientific data indicating that drilling might adversely impact the caribou. Secretary Norton withheld from Congress information that:

- Some part of the herd has calved in the 1002 area for 27 of the past 30 years.
- Calf production and survival are lower when the Porcupine Caribou Herd does not calve in the 1002 area.
- Herd birth rates were lower in areas near oil field development than elsewhere.<sup>35</sup>

One Fish and Wildlife official told the *Washington Post*:

If Congress is going to have a serious discussion on the future of the Arctic refuge, it ought to have the whole story, not a slanted story . . . . We tried to present all the facts, but she only passed along the ones she liked. And to pass along facts that are false, well, that’s obviously inappropriate.<sup>36</sup>

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<sup>31</sup> Letter from Interior Secretary Gale Norton to Senator Frank Murkowski (July 11, 2001) (online at <http://www.peer.org/alaska/ANWR01.PDF>).

<sup>32</sup> *Departmental Differences Show over ANWR Drilling*, *supra* note 30.

<sup>33</sup> *Id.*; Letter from Interior Secretary Gale Norton to Senator Frank Murkowski, *supra* note 31.

<sup>34</sup> Letter from Interior Secretary Gale Norton to Senator Frank Murkowski, *supra* note 31.

<sup>35</sup> *Id.*

<sup>36</sup> *Departmental Differences Show over ANWR Drilling*, *supra* note 30.



While Secretary Norton subsequently admitted her mistake in reversing “inside” and “outside,” she did not address any of the other discrepancies between her letter and the biologists’ assessment.<sup>37</sup>

## Breast Cancer

Claiming that abortion can cause breast cancer, social conservatives have pushed for laws across the country that require doctors to provide “counseling” about this alleged risk to all women seeking abortions.<sup>38</sup> As these efforts advanced last year, the Bush Administration distorted the science on this issue to misleadingly portray abortion as a risk factor in breast cancer when there is a scientific consensus that it is not.

Until the summer of 2002, the National Cancer Institute posted an analysis on its web site concluding that the current body of scientific evidence does not support the claim that abortions increase a woman’s risk of breast cancer.<sup>39</sup> The analysis explained that after some uncertainty before the mid-1990s, this issue had been resolved by several well-designed studies, the largest of which was published in the *New England Journal of Medicine* in 1997,<sup>40</sup> finding no link between abortion and breast cancer risk.

In November 2002, however, the Bush Administration removed this analysis and posted new information about abortion and breast cancer on the NCI web site. The new fact sheet stated:

[T]he possible relationship between abortion and breast cancer has been examined in over thirty published studies since 1957. Some studies have reported statistically significant evidence of an increased risk of breast cancer in women who have had abortions, while others have merely suggested an increased risk. Other studies have found no increase in risk among women who have had an interrupted pregnancy.<sup>41</sup>

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<sup>37</sup> Norton Admits “Mistake” on Refuge Drilling Review, Washington Post (Oct. 20, 2001).

<sup>38</sup> Texas OKs Disputed Abortion Legislation, Los Angeles Times, 1 (May 22, 2003).

<sup>39</sup> National Cancer Institute, *Abortion and Breast Cancer* (Mar. 6, 2002) (online at [http://www.house.gov/reform/min/pdfs/pdf\\_inves/pdf\\_admin\\_hhs\\_info\\_abc\\_fact\\_sheet\\_orig.pdf](http://www.house.gov/reform/min/pdfs/pdf_inves/pdf_admin_hhs_info_abc_fact_sheet_orig.pdf)).

<sup>40</sup> M. Melbye et al., *Induced Abortion and the Risk of Breast Cancer*, *New England Journal of Medicine*, 81–85 (Jan. 9, 1997).

<sup>41</sup> National Cancer Institute, *Early Reproductive Events and Breast Cancer* (Nov. 25, 2002) (online at [http://www.house.gov/reform/min/pdfs/pdf\\_inves/pdf\\_admin\\_hhs\\_info\\_abc\\_fact\\_sheet\\_revis.pdf](http://www.house.gov/reform/min/pdfs/pdf_inves/pdf_admin_hhs_info_abc_fact_sheet_revis.pdf)).

This new fact sheet erroneously suggested that whether abortion caused breast cancer was an open question with studies of equal weight supporting both sides. The *New York Times* called the NCI's new statement "an egregious distortion of the evidence."<sup>42</sup> According to the director of epidemiology research for the American Cancer Society, "This issue has been resolved scientifically . . . . This is essentially a political debate."<sup>43</sup>

After members of Congress protested the change,<sup>44</sup> NCI convened a three-day conference of experts on abortion and breast cancer. Participants reviewed all existing population-based, clinical, and animal data available, and concluded that "[i]nduced abortion is not associated with an increase in breast cancer risk," ranking this conclusion as "well-established."<sup>45</sup> On March 21, 2003, the NCI web site was updated to reflect this conclusion.<sup>46</sup>

## Condoms

Social conservatives have long opposed government efforts to support birth control. In recent years, some have claimed that condoms are not very effective in protecting against sexually transmitted diseases and have pressed federal agencies to adopt this viewpoint.<sup>47</sup> Under the Bush Administration, scientific evidence on the effectiveness of condoms has been suppressed or distorted to reflect this conclusion.

## Web Sites

In October 2002, CDC replaced a comprehensive online fact sheet about condoms with one lacking crucial information on condom use and efficacy. The original information, titled *Condoms and Their Use in Preventing HIV Infection and Other STDs*, included sections on the proper use of condoms, the effectiveness of

<sup>42</sup> *Abortion and Breast Cancer*, New York Times (Jan. 6, 2003).

<sup>43</sup> Abortion Foes Seize on Reports of Cancer Link in Ad Campaign, Los Angeles Times (Mar. 24, 2002).

<sup>44</sup> Letter from Rep. Henry A. Waxman et al. to Secretary of Health and Human Services Tommy G. Thompson (Dec. 18, 2002).

<sup>45</sup> National Cancer Institute, *Summary Report: Early Reproductive Events and Breast Cancer* (Mar. 4, 2003) (online at <http://www.cancer.gov/cancerinfo/ere-workshop-report>)

<sup>46</sup> National Cancer Institute, *Abortion, Miscarriage, and Breast Cancer Risk* (Mar. 21, 2003) (online at [http://cis.nci.nih.gov/fact/3\\_75.htm](http://cis.nci.nih.gov/fact/3_75.htm)).

<sup>47</sup> See, e.g., Family Research Council Advisory Board Member Dr. John Diggs, Testimony before the Health Subcommittee, House Energy and Commerce Committee, 107<sup>th</sup> Cong. (Apr. 24 2002) (online at <http://www.frc.org/get/pd02d3.cfm>).

different types of condoms, and studies showing that condom education does not promote sexual activity.<sup>48</sup> It noted that “a World Health Organization (WHO) review . . . found no evidence that sex education leads to earlier or increased sexual activity in young people.”<sup>49</sup>

A revised fact sheet was subsequently posted entitled *Male Latex Condoms and Sexually Transmitted Diseases*. The new fact sheet lacks instruction on condom use and specific information on the effectiveness of different types of condoms. It begins by emphasizing condom failure rates and the effectiveness of abstinence. It also drops the discussion of the evidence that sex education does not lead to increased sexual activity.<sup>50</sup>

Like the CDC, the State Department’s Agency for International Development (USAID) has censored its web site to remove information on the effectiveness of condoms. As recently as February 2003, USAID’s web site included two detailed documents on condom effectiveness. The document *The Effectiveness of Condoms in Preventing Sexually Transmitted Infections* stated: “Latex condoms are highly effective in prevention of HIV/AIDS” and “Public and government support for latex condoms is essential for disease prevention.”<sup>51</sup> The document *USAID: HIV/AIDS and Condoms* also stated that condoms are “highly effective for preventing HIV infection.” It called condom distribution a “cornerstone of USAID’s HIV prevention strategy.”<sup>52</sup>

USAID then substantially altered its web site. The document *The Effectiveness of Condoms in Preventing Sexually Transmitted Infections* is no longer available. The document *USAID: HIV/AIDS and Condoms* states only that “condom use can reduce the risk of HIV infection” and “[w]hile no barrier method is 100 percent

<sup>48</sup> CDC, *Condoms and Their Use in Preventing HIV Infection and Other STDs* (Sept. 1999) (online at [http://www.house.gov/reform/min/pdfs/pdf\\_inves/pdf\\_admin\\_hhs\\_info\\_condoms\\_fact\\_sheet\\_orig.pdf](http://www.house.gov/reform/min/pdfs/pdf_inves/pdf_admin_hhs_info_condoms_fact_sheet_orig.pdf)).

<sup>49</sup> *Id.*

<sup>50</sup> CDC, *Male Latex Condoms and Sexually Transmitted Diseases* (2002) (online at [http://www.house.gov/reform/min/pdfs/pdf\\_inves/pdf\\_admin\\_hhs\\_info\\_condoms\\_fact\\_sheet\\_revis.pdf](http://www.house.gov/reform/min/pdfs/pdf_inves/pdf_admin_hhs_info_condoms_fact_sheet_revis.pdf)).

<sup>51</sup> USAID, *The Effectiveness of Condoms in Preventing Sexually Transmitted Infections* (accessed Jan. 28, 2003 at [http://www.usaid.gov/pop\\_health/aids/TechAreas/condoms/condom\\_effect.html](http://www.usaid.gov/pop_health/aids/TechAreas/condoms/condom_effect.html)) (emphasis added).

<sup>52</sup> USAID, *USAID: HIV/AIDS and Condoms* (accessed Feb. 10, 2003 at [http://www.usaid.gov/pop\\_health/aids/TechAreas/condoms/condomfactsheet.html](http://www.usaid.gov/pop_health/aids/TechAreas/condoms/condomfactsheet.html)) (emphasis added).

effective, correct and consistent use of latex condoms can reduce the risk of transmission of HIV and some other STIs.”<sup>53</sup>

### **International Negotiations**

The Bush Administration has also promoted unscientific positions on condom use internationally. In December 2002, the U.S. delegation at the Asian and Pacific Population Conference sponsored by the United Nations attempted to delete endorsement of “consistent condom use” as a means of preventing HIV infection. U.S. delegates took this position on the grounds that recommending condom use would promote underage sex.<sup>54</sup> Contrary to these U.S. claims, scientific studies have shown that comprehensive sex education delays the onset of sexual activity.<sup>55</sup> The U.S. opposition to “consistent condom use” was rejected, 32–1.

### **Drinking Water**

Perchlorate, the main chemical ingredient of solid rocket fuel, alters the production of thyroid hormones and poses special health risks to developing fetuses and infants.<sup>56</sup> As concern over the potential contamination of water and food supplies with perchlorate has grown, the Defense Department has suppressed investigations into the extent of the problem.

In 1997, the Pentagon and several of its contractors began several toxicological studies of perchlorate.<sup>57</sup> Based on the results of these studies and other research indicating health risks at low exposure levels, EPA in January 2002 proposed a limit of one part per billion of perchlorate in drinking water.<sup>58</sup> This level would require extensive cleanup efforts at numerous sites contaminated by the Defense Department or its contractors.

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<sup>53</sup> USAID, *USAID: HIV/AIDS and Condoms* (Apr. 2003) (online at [http://www.usaid.gov/pop\\_health/aids/TechAreas/condoms/condomfactsheet.html](http://www.usaid.gov/pop_health/aids/TechAreas/condoms/condomfactsheet.html)).

<sup>54</sup> *U.S. Stance on Abortion and Condom Use Rejected at Conference*, San Jose Mercury News (Dec. 17, 2002).

<sup>55</sup> D. Kirby, *supra* note 12, at 171 (“a number of programs that discussed condoms or other forms of contraception and encouraged their use among sexually active youth also delayed or reduced the frequency of sexual intercourse”).

<sup>56</sup> EPA, *Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization* (Jan. 16, 2002).

<sup>57</sup> *Perchlorate Runoff Flows to Water Supply of Millions*, Wall Street Journal (Dec. 16, 2002).

<sup>58</sup> *Id.*

Subsequently, the Pentagon dropped plans to require definitive perchlorate testing at all active and inactive sites.<sup>59</sup> In addition, while the Defense Department gathered preliminary data in a 2001 survey of military sites, it has yet to share this data with EPA.<sup>60</sup> Instead of proceeding with its scientific investigations, the Administration proposed legislation to provide liability protection for the Pentagon and its contractors from claims related to perchlorate.<sup>61</sup>

## Education Policy

The Department of Education has asked employees to censor the Department's web site based on the political priorities of the Bush Administration.

In May 2002, the Department of Education circulated an internal memo entitled "Criteria & Process for Removing Old Content from www.ed.gov."<sup>62</sup> The memo explains that the www.ed.gov portal, the largest of the Department's sites, lacks common design themes and navigational systems. Furthermore, it states that "[m]uch of the content on these pages is either outdated or runs counter to current Administration priorities."<sup>63</sup> The memo instructs employees to remove all items dated earlier than February 2001 unless the item:

Is needed for a legal reason;  
Supports No Child Left Behind or other Administration priorities and initiatives;  
Is important for historical perspective (ie: statistical trends, the Nation at Risk report);  
Is important for policy reasons identified by an Assistant Secretary; or  
Is useful or valuable to parents, students, or educators and is consistent with the Administration's philosophy.<sup>64</sup>

The American Educational Research Association and 12 additional national educational organizations wrote a letter to Education Secretary Rod Paige

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<sup>59</sup> *Fuel-Ingredient Perchlorate is Center of Fight With EPA on Evaluations Near Bases*, Wall Street Journal (June 20, 2003).

<sup>60</sup> *Pentagon Hid Pollution Report, Lawmakers Say*, Wall Street Journal (May 19, 2003).

<sup>61</sup> *Id.*; "Defense Transformation for the 21st Century Act of 2003," S.927, section 301 (Apr. 28, 2003).

<sup>62</sup> Department of Education, *Criteria and Process for Removing Old Content from www.ed.gov* (May 31, 2002).

<sup>63</sup> *Id.* (emphasis added).

<sup>64</sup> *Id.* (emphasis added).

expressing concern about the suppression of information.<sup>65</sup> Executive Director Dr. Felice J. Levine commented, “Sound policy depends on solid science . . . . We need to ensure that research materials remain accessible so that analysts can interrogate them further and compare new results with prior data. We need to resist policies or procedures that remove such information or make it difficult to find.”<sup>66</sup>

## Environmental Health

In 2002, HHS impeded the government’s ability to obtain objective scientific advice on environmental health matters by stacking an advisory committee.

The National Center for Environmental Health (NCEH) at CDC has an advisory committee charged with providing advice on “program goals and objectives, strategies, and priorities” in the area of “environmental health and related disciplines.”<sup>67</sup> In August 2002, HHS appointed 15 new members of this committee, apparently without consulting NCEH director Dr. Richard Jackson.<sup>68</sup> The new advisers, who now constitute a majority of the 18-member committee, include individuals with close ties to regulated industries, such as:

- Roger McClellan, former director of the Chemical Industry Institute of Toxicology;
- Becky Norton Dunlop, Vice President of the anti-regulatory Heritage Foundation and opponent of federal environmental regulations while serving as an official in Virginia;
- Lois Swirsky Gold, a risk assessment specialist who has minimized reports linking environmental pollutants with cancer; and
- Dennis Paustenbach, a toxicologist whose firm does paid risk assessments for industry.<sup>69</sup>

Departing adviser Ellen Silbergeld stated that such changes are likely to be “demoralizing to the people being advised.”<sup>70</sup> Ten leading scientists wrote in

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<sup>65</sup> Letter from American Educational Research Association et al. to Secretary of Education Rod Paige (Oct. 25, 2002).

<sup>66</sup> American Educational Research Association, *AERA NEWS: Societies Raise Concerns About Document Removal from U.S. Department of Education Web Site* (Nov. 21, 2002) (online at <http://www.era.net/communications/news/021121.htm>).

<sup>67</sup> NCEH, *Charter, Advisory Committee to the Director, National Center for Environmental Health* (in effect through Aug. 2, 2004).

<sup>68</sup> David Michaels et al., *Advice Without Dissent*, *Science*, 703 (Oct. 25, 2002).

<sup>69</sup> *Critics See a Tilt in CDC Science Panel*, *Science*, 1456–57 (Aug. 30, 2002).

<sup>70</sup> *Id.*

*Science* that “stacking these public committees out of fear that they may offer advice that conflicts with administration policies devalues the entire federal advisory committee structure and the work of dedicated scientists who are willing to participate in these efforts.”<sup>71</sup>

## **Global Warming**

When President Bush rejected the Kyoto Protocol on greenhouse gas emissions, he promised the American people that “my Administration’s climate change policy will be science-based.”<sup>72</sup> In fact, however, the Bush Administration has repeatedly manipulated scientific committees and suppressed science in this area.

### **Chair of International Science Panel**

In early 2002, the State Department successfully opposed the re-appointment of a leading U.S. climatologist to the top position on the preeminent international global warming study panel.<sup>73</sup>

Dr. Robert Watson had been chair of the Intergovernmental Panel on Climate Change (IPCC) since 1996. An internationally respected scientist and recipient of numerous awards and honors, Dr. Watson had been the Director of the Science Division at the National Aeronautics and Space Administration and chief scientist at the World Bank. Under his leadership, the IPCC had produced a report predicting an increase of 2.5 to 10.5 degrees Fahrenheit in average global temperatures by 2100<sup>74</sup> and concluding that “[t]here is new and stronger evidence that most of the warming observed over the last 50 years is attributable to human activities.”<sup>75</sup> These conclusions were affirmed by the National Academy of Sciences.<sup>76</sup>

After the release of the 2001 report, ExxonMobil lobbied the Bush administration for Dr. Watson’s ouster. A February 6, 2001 memo sent by ExxonMobil to John Howard of the Council on Environmental Quality at the White House criticized

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<sup>71</sup> David Michaels, et al., *supra* note 68.

<sup>72</sup> White House, *President’s Statement on Climate Change* (July 13, 2001) (online at <http://www.whitehouse.gov/news/releases/2001/07/20010713-2.html>).

<sup>73</sup> *Battle Over IPCC Chair Renews Debate on U.S. Climate Policy*, *Science* (Apr. 12, 2002).

<sup>74</sup> Intergovernmental Panel on Climate Change, *Climate Change 2001: The Scientific Basis*, Summary for Policymakers (2001) (online at [http://www.grida.no/climate/ipcc\\_tar/wg1/008.htm](http://www.grida.no/climate/ipcc_tar/wg1/008.htm)).

<sup>75</sup> *Id.* at Preface (online at [http://www.grida.no/climate/ipcc\\_tar/wg1/004.htm](http://www.grida.no/climate/ipcc_tar/wg1/004.htm)).

<sup>76</sup> National Academy of Sciences, Commission on Geosciences, Environment and Resources, *Climate Change Science: An Analysis of Some Key Questions* (2001).

Dr. Watson and asked, “Can Watson be replaced now at the request of the U.S.?”<sup>77</sup> ExxonMobil opposes the regulation of carbon dioxide emissions that contribute to global warming and gives over a million dollars a year to groups that question the existence of global warming.<sup>78</sup>

Subsequently, the State Department opposed Dr. Watson’s reelection to head the panel. The Department gave no scientific rationale for this decision. In April 2002, lacking the support of his home country, Dr. Watson lost his position as chair.<sup>79</sup>

One leading researcher, Michael Oppenheimer of Princeton University, commented to *Science*: “It is scandalous . . . . This is an invasion of narrow political considerations into a scientific process.”<sup>80</sup>

### Information about Global Warming

The Bush Administration has also suppressed scientific evidence on global warming. In September 2002, the section on global warming was removed from an annual report on the state of air pollution.<sup>81</sup> Then, in June 2003, the Administration published a supposedly “comprehensive” report on the environment without any information on climate change. According to EPA Administrator Christine Todd Whitman, the *Draft Report on the Environment* used “the most sophisticated science ever” and represented “a comprehensive roadmap to ensure that all Americans have cleaner air, purer water and better protected land.”<sup>82</sup> However, this report contained no information on global warming. Instead, the document stated, “This report does not attempt to address the complexities of this issue.”<sup>83</sup>

Politics, not the complexities of science, led to the deletion of the section on global warming. The *New York Times* reported that when an earlier draft of the

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<sup>77</sup> Memo from Randy Randol, ExxonMobil Washington Office, to John Howard, White House Council on Environmental Quality (Feb. 6, 2001) (online at <http://www.nrdc.org/media/docs/020403.pdf>).

<sup>78</sup> *Exxon Backs Groups That Question Global Warming*, New York Times (May 28, 2003).

<sup>79</sup> *Global Warming Official Out*, Atlanta Journal-Constitution (Apr. 20, 2002).

<sup>80</sup> *Battle over IPCC Chair Renews Debate on U.S. Climate Policy*, Science (Apr. 12, 2002).

<sup>81</sup> Jeremy Symons, *How Bush and Co. Obscure the Science*, Washington Post (July 13, 2003).

<sup>82</sup> EPA, *EPA Announces Unprecedented First “Draft Report on the Environment”* (June 23, 2003).

<sup>83</sup> EPA, *Draft Report on the Environment 2003*, 1-11 (online at <http://www.epa.gov/indicators/roe/html/roeAirGlo.htm>).



report containing a section on global warming was sent to the White House, the President’s advisors demanded major revisions.<sup>84</sup> Specifically, the White House opposed mention of research demonstrating sharp increases in global temperature over the past decade compared to the previous millennium. The White House even objected to the reference to a National Academy of Sciences report on the human contribution to global warming that the White House itself had requested and that had been endorsed by President Bush in speeches that year.<sup>85</sup> Administration officials replaced these sections with a reference to a study funded by the American Petroleum Institute questioning climate change evidence.<sup>86</sup>

The White House even sought to replace the scientifically indisputable statement that “[c]limate change has global consequences for human health and the environment” with a statement about the “complexity of the Earth system and the interconnections among its components.”<sup>87</sup>

An internal EPA memorandum circulated during the editing process noted that after these changes, the section “no longer accurately represents scientific consensus on climate change.”<sup>88</sup> Another memo stated that by accepting the White House changes, “E.P.A. will take responsibility and severe criticism from the science and environmental communities for poorly representing the science.”<sup>89</sup>

In the end, EPA officials chose to eliminate the section on global warming entirely. Russell Train, who served as EPA Administrator to Presidents Nixon and Ford, wrote in a letter to the *New York Times*:

I can state categorically that there never was such White House intrusion into the business of the E.P.A. during my tenure. The E.P.A. was established as an independent agency in the executive branch, and so it should remain. There appears today to be a steady erosion in its independent status. I can appreciate the president’s interest in not having discordant voices within his Administration. But the interest of the American people lies in having full disclosure of the facts, particularly

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<sup>84</sup> *Report by E.P.A. Leaves out Data on Climate Change*, *New York Times* (June 19, 2003).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

when the issue is one with such potentially enormous damage to the long-term health and economic well-being of all of us.<sup>90</sup>

### **Analyses Requested by Congress**

EPA has long had the important role of providing technical support to Congress by analyzing proposed legislation upon request. During the Bush Administration, however, EPA has refused to conduct or release analysis of several key pieces of legislation related to greenhouse gases that are opposed by the Administration.

President Bush has proposed the Clear Skies Act, which would reduce emissions of three pollutants from power plants but would not regulate carbon dioxide, a key greenhouse gas. In July 2002, Senator Thomas Carper of Delaware introduced competing legislation that sets tighter emissions limits and includes carbon dioxide.<sup>91</sup> Senator Carper requested that EPA provide a detailed analysis of his legislation, as it had done for Clear Skies, to enable Congress to compare the two approaches.

EPA, however, refused to release its analysis of Senator Carper's bill for months. When the agency finally released some information, it limited the report to the costs of the bill, continuing to withhold the information on benefits.<sup>92</sup> EPA's complete analysis, which was not released, showed that Senator Carper's legislation would be more effective and only slightly more expensive than the President's Clear Skies Act. Specifically, it projected that Senator Carper's bill would reduce emissions to levels lower than those projected under the Clear Skies Act, cost only two-tenths of a cent per kilowatt hour more than the President's plan, and save 17,800 more lives, as well as including controls on carbon dioxide.<sup>93</sup>

In addition, EPA has refused to complete an analysis that could demonstrate the feasibility of controlling greenhouse gas emissions. Senators John McCain and Joseph Lieberman have introduced legislation to establish national mandatory caps on greenhouse gas emissions. The Bush Administration opposes this legislation. In the past, EPA has analyzed numerous proposals for regulation of greenhouse gas emissions, and the Senators specifically requested EPA to analyze the costs and benefits of their bill. However, the Administration blocked the completion of the EPA analysis, which preliminarily found a \$1 billion to \$2

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<sup>90</sup> Russell E. Train, *When Politics Trumps Science* (Letter to the Editor), New York Times (June 21, 2003).

<sup>91</sup> S. 3135, 107<sup>th</sup> Cong. (2002).

<sup>92</sup> *EPA Withholds Air Pollution Analysis*, Washington Post (July 1, 2003).

<sup>93</sup> *Id.*

billion impact to the economy, in favor of an Energy Department study, which concluded that the impact would be \$106 billion.<sup>94</sup>

Commenting on EPA's refusals, William Ruckelshaus, the first EPA Administrator under President Nixon, told the *New York Times*:

Whether or not analysis is released is based on at least two factors . . . . Is the analysis flawed? That is a legitimate reason for not releasing it. But if you don't like the outcome that might result from the analysis, that is not a legitimate reason.<sup>95</sup>

## HIV/AIDS

President Bush has said that international efforts to fight HIV/AIDS should be concentrated on "programs that work, proven best practices."<sup>96</sup> At home, however, the Administration has obstructed the development of science-based policies and research on HIV/AIDS among the gay population.

In January 2003, President Bush appointed marketing consultant Jerry Thacker to the Presidential Advisory Council on HIV/AIDS. Mr. Thacker has described homosexuality as a "deathstyle" and referred to AIDS as "the gay plague."<sup>97</sup> Mr. Thacker has also promoted "reparative therapy," a process by which homosexuals are "reformed" through religion.<sup>98</sup> According to the American Psychological Association, such therapy lacks an evidence base and attracts patients because of social pressure and ignorance.<sup>99</sup> Shortly after the appointment was made public, Mr. Thacker withdrew his name from consideration for the Council.<sup>100</sup>

At NIH, officials have told scientists who study HIV and AIDS to prepare for political interference with their research. In May 2003, the *New York Times* reported that HHS may be applying "unusual scrutiny" to grants that used key

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<sup>94</sup> *New Estimates on Senate Carbon Dioxide Plans*, New York Times (July 30, 2003).

<sup>95</sup> *Critics Say E.P.A. Won't Analyze Clean Air Proposals Conflicting with President's Policies*, New York Times (July 14, 2003).

<sup>96</sup> White House, *Remarks by the President during Announcement of Proposal for Global Fund to Fight HIV/AIDS, Malaria and Tuberculosis* (May 11, 2001).

<sup>97</sup> *AIDS Panel Choice Wrote of a 'Gay Plague'; Views of White House Commission Nominee Draw Criticism*, Washington Post (Jan. 23, 2003).

<sup>98</sup> *Gays Shocked at Bush Choice for AIDS Panel*, San Francisco Chronicle (Jan. 23, 2003).

<sup>99</sup> American Psychological Association, *Resolution on Appropriate Therapeutic Responses to Sexual Orientation* (Aug. 14, 1997) (online at <http://www.apa.org/pi/reslgbc.html>)

<sup>100</sup> *Choice for AIDS Panel Withdraws after Criticism*, Washington Post (Jan. 24, 2003).

words such as “men who sleep with men,” “gay,” and “homosexual.”<sup>101</sup> Experts responded that such scrutiny can only undermine effective science to combat AIDS. Dr. Alfred Sommer, dean of the Bloomberg School of Public Health at Johns Hopkins University, commented, “If people feel intimidated and start clouding the language they use, then your mind starts to get cloudy and the science gets cloudy.”<sup>102</sup>

## Lead Poisoning

In the summer of 2002, CDC’s Advisory Committee on Childhood Lead Poisoning Prevention was preparing to confront the controversial issue of whether to expand the diagnosis of lead poisoning to include children with lower levels of blood lead. For more than a decade, the committee had advised intervention if levels measured 10 micrograms per deciliter or greater.<sup>103</sup> While the lead industry has opposed lowering the standard,<sup>104</sup> recent research has suggested that the cognitive development of children may be impaired at levels of 5 micrograms per deciliter or lower.<sup>105</sup> As the committee prepared to consider changing the standard, HHS Secretary Thompson removed or rejected several qualified scientists and replaced them with lead industry consultants.<sup>106</sup>

Specifically, HHS failed to reappoint Dr. Michael Weitzman of the University of Rochester and then rejected the nominations of Dr. Bruce Lanphear of the University of Cincinnati and Dr. Susan Klitzman of the Hunter College School of Health Sciences. These preeminent scientists have each published numerous papers in the scientific literature on lead poisoning.<sup>107</sup>

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<sup>101</sup> *Certain Words Can Trip up AIDS Grants, Scientists Say*, New York Times (Apr. 18, 2003).

<sup>102</sup> *Id.*

<sup>103</sup> Advisory Committee on Childhood Lead Poisoning Prevention, *Preventing Lead Poisoning in Young Children* (Oct. 1, 1991).

<sup>104</sup> *Lead Poisoning Science Panel “Contaminated” by Bias, Critics Charge*, Gannett News Service (Nov. 26, 2002).

<sup>105</sup> R. Canfield et al., *Intellectual Impairment in Children With Blood Lead Concentration Below 10*, New England Journal of Medicine, 1517–26 (Apr. 17, 2003).

<sup>106</sup> Staff of Representative Edward J. Markey, *Turning Lead Into Gold: How the Bush Administration Is Poisoning the Lead Advisory Committee at the CDC* (Oct. 8, 2002).

<sup>107</sup> Dr. Michael Weitzman is the executive director of the American Academy of Pediatrics’ Center for Child Health Research and a former member of the New York State Advisory Council on Lead Poisoning Prevention. Dr. Lanphear is the Sloan Professor Children’s Environmental Health at the University of Cincinnati and a former member of the Lead Poisoning Prevention Task Force in the Monroe County Health Department. Dr. Susan Klitzman is Associate Professor of Urban Public Health at the Hunter College School of

In their place, HHS proposed several individuals with significant ties to the lead industry. These included Dr. William Banner, who has served as an expert witness for Sherwin-Williams paint company, a maker of lead paint, and Dr. Joyce Tsuji, who worked for two companies that represented lead firms.<sup>108</sup>

The appointment of Dr. Banner was particularly egregious. His only lead-related research publications involved experimental treatment of rats.<sup>109</sup> Dr. Banner has testified that a lead level of 70 micrograms per deciliter is safe for children's brains.<sup>110</sup> This position does not appear to be shared by any expert or scientific organization independent of the lead industry. In fact, contrary evidence emerged over 30 years ago, and as early as 15 years ago there was scientific consensus that children's brains were damaged by lower levels of lead.<sup>111</sup>

Information later emerged that the lead industry had played a key role in the appointments. Another new nominee, Dr. Sergio Piomelli, said at the committee's October 2002 meeting: "Before some reporter detects it, I would like you to know that I was called a few months ago from somebody in the lead industry . . . and asked if I don't mind if they nominated me for this committee. I said, 'Yes.'"<sup>112</sup> Drs. Banner and Piomelli have since become members of the committee.<sup>113</sup>

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Health Sciences and the former head of the New York City Health Department's lead poisoning prevention program. All have published multiple papers in the peer-reviewed medical literature on lead poisoning.

<sup>108</sup> Office of Representative Edward J. Markey, *Lead Poisoning Advisory Panel Weighed Down by Lead Industry's Friends* (Oct. 8, 2002).

<sup>109</sup> Deposition of Dr. William Banner, Jr., (June 13, 2002), in *State of Rhode Island v. Lead Industries Assoc.*, C.A. No. 99-5526 (Sup. Ct. R.I. Apr. 2, 2001).

<sup>110</sup> *Id.* ("Question: So the absence of encephalopathy, which you have indicated is possible above lead levels of 70 but more likely of lead levels above 100, you don't believe — is it your opinion that there are no central nervous system deficits or injuries that are associated with exposure and ingestion of lead? Answer: Well, you're using the word 'associated.' Question: Okay. That's right, I am. Answer: And no I don't believe there have been — no").

<sup>111</sup> See, e.g., B. De la Burde and M. S. Choate, *Does Asymptomatic Lead Exposure in Children Have Latent Sequelae?* *Journal of Pediatrics*, 1088–1091 (Dec. 1972); American Academy of Pediatrics, *Statement on Childhood Lead Poisoning*, *Pediatrics*, 457–465 (Mar. 1987).

<sup>112</sup> *Toxic: The Lead Industry Gets Its Turn*, *New Republic* (Dec. 23, 2002).

<sup>113</sup> CDC, *Advisory Committee on Childhood Lead Poisoning Prevention Roster* (online at <http://www.cdc.gov/nceh/lead/ACCLPP/members.htm>).

## Missile Defense

After abrogating the Anti-Ballistic Missile Treaty, President Bush ordered the deployment of a missile defense system by 2004.<sup>114</sup> In making the case for missile defense, however, leading Defense Department officials have distorted scientific evidence on the feasibility of such a system.

In 2002 and 2003, General Ronald Kadish, head of the Pentagon's Missile Defense Agency, said that the Pentagon would complete a test facility in Alaska by the end of 2004.<sup>115</sup> Deputy Defense Secretary Paul Wolfowitz told a Senate Appropriations Committee that prototype interceptors able to shoot down enemy missiles would be in place at the facility by September 2004.<sup>116</sup> Most dramatically, Under Secretary of Defense Edward Aldridge told a Senate panel that by the end of 2004, the system would be 90% effective in intercepting missiles from the Korean peninsula.<sup>117</sup>

Leading independent experts have reported that these claims are unjustified. Philip Coyle, former director of the Office of Operational Test and Evaluation at the Pentagon, has reported that a missile defense system was "at least a decade" from completion.<sup>118</sup> The editors of *Scientific American* have said, "Regarding missile defense, researchers' best guess is that a reliable system is infeasible."<sup>119</sup> In April 2003, GAO found the President's plan unworkable and even dangerous.<sup>120</sup>

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<sup>114</sup> *Threats and Responses: Defense*, New York Times (Dec. 18, 2002).

<sup>115</sup> *Democrats Criticize Pentagon Budget, Anti-Terror War*, Washington Post (Feb. 28, 2002); General Ronald Kadish, *Testimony before Senate Armed Services Committee* (Mar. 18, 2003).

<sup>116</sup> *Pentagon Sees Sample Rocket By 2004*, New York Times (Feb. 27, 2002); Deputy Defense Secretary Paul Wolfowitz, *Testimony before Senate Appropriations Committee, Defense Subcommittee* (Feb. 27, 2002).

<sup>117</sup> *US Claims 90% Hit Rate in Missile Plan*, Los Angeles Times (Mar. 19, 2003); Under Secretary of Defense Edward Aldridge, *Testimony before Senate Armed Services Committee* (Mar. 18, 2003).

<sup>118</sup> Philip Coyle, *The ABM Ambush*, Washington Post (July 13, 2001).

<sup>119</sup> *Faith-Based Reasoning*, Scientific American (June 2001).

<sup>120</sup> GAO, *Missile Defense: Knowledge-Based Practices Are Being Adopted, but Risks Remain* (Apr. 2003).

Under Secretary Aldridge's claim of 90% effectiveness is particularly misleading. It is not supported by any publicly available evidence, and it appears not to comport with the Pentagon's own classified estimates.<sup>121</sup>

## Oil and Gas

The Bush Administration has changed scientific data or suppressed scientific information to favor an oil and gas practice called "hydraulic fracturing." The leading provider of hydraulic fracturing is the energy company Halliburton, previously led by Vice President Cheney. According to the company's web site, "Halliburton pioneered fracturing . . . and has consistently led in the technology."<sup>122</sup>

In carrying out hydraulic fracturing, companies sometimes inject fracturing fluids containing benzene and other carcinogenic and toxic chemicals into geologic formations containing underground sources of drinking water.<sup>123</sup> In the fall of 2002, EPA officials briefed congressional staff on an August 2002 draft agency study on this issue. The data in the study indicated that hydraulic fracturing could lead to benzene in underground sources of drinking water at levels above federal drinking water standards.<sup>124</sup>

After congressional staff raised concerns about these about these environmental impacts, EPA changed the data. One week after discussing these results with congressional staff, EPA officials produced revised data indicating that benzene levels would not exceed government standards.<sup>125</sup> EPA gave no scientific justification for the change, explaining that it was "based on feedback" from an industry source.<sup>126</sup>

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<sup>121</sup> Letter from Reps. Henry A. Waxman and John F. Tierney to Sens. John W. Warner and Carl Levin (Mar. 19, 2003).

<sup>122</sup> Halliburton, *Fracturing* (online at [http://www.halliburton.com/oil\\_gas/sd0922.jsp](http://www.halliburton.com/oil_gas/sd0922.jsp)).

<sup>123</sup> EPA, *DRAFT Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs*, 5–14 (Aug. 2002) (EPA 816-D-01-006).

<sup>124</sup> *Id.*

<sup>125</sup> EPA, *Calculations for Estimating Fracture Zone Concentrations for Three Scenarios* (Sept. 18, 2002), cited in Letter from Rep. Henry A. Waxman to EPA Secretary Christine Todd Whitman (Oct. 8, 2002) (online at [http://www.house.gov/reform/min/pdfs/pdf\\_inves/pdf\\_enviro\\_epa\\_hydraulic\\_oct\\_8\\_let.pdf](http://www.house.gov/reform/min/pdfs/pdf_inves/pdf_enviro_epa_hydraulic_oct_8_let.pdf)).

<sup>126</sup> Letter from Rep. Henry A. Waxman to EPA Secretary Christine Todd Whitman (Oct. 8, 2002) (online at [http://www.house.gov/reform/min/pdfs/pdf\\_inves/pdf\\_enviro\\_epa\\_hydraulic\\_oct\\_8\\_let.pdf](http://www.house.gov/reform/min/pdfs/pdf_inves/pdf_enviro_epa_hydraulic_oct_8_let.pdf)).

The White House also deleted a discussion of environmental concerns associated with hydraulic fracturing, including the potential for water contamination, from the final White House National Energy Policy. This deletion occurred after such discussion had been included in a draft produced by the Department of Energy.<sup>127</sup>

## Prescription Drug Advertising

There is ongoing debate on the value of prescription drug advertising directed at consumers, including television advertising. Pharmaceutical companies, which spend \$2.5 billion on such advertising, contend that the messages inform patients and improve health care.<sup>128</sup> On the other hand, some independent experts have found that the advertisements often confuse and mislead patients.<sup>129</sup> A recent FDA report distorted scientific evidence on this issue in a manner that supports the position of the pharmaceutical industry.

In an FDA *Talk Paper*, dated January 13, 2003, the agency claimed that the results of a survey of 500 physicians “confirm that DTC advertising, when done correctly, can serve positive public health functions.”<sup>130</sup> The *Talk Paper* then listed “highlights” of the study, including the finding that “most [physicians] agreed that, because their patients saw a DTC ad, he or she asked more thoughtful questions during the visit.” The result referred to a question in which physicians were asked to recall their last interaction with a patient about a direct-to-consumer advertisement. In fact, the actual findings were that 59% of physicians responded that the interaction had no beneficial effects and just 4% felt that the advertisement had informed or educated the patient.<sup>131</sup>

The *Talk Paper* also highlighted that “one effect of DTC ads was to help educate patients about their health problems, and to provide greater awareness of treatments.”<sup>132</sup> FDA’s summary did not mention, however, that 65% of

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<sup>127</sup> *Bush’s Energy Plan Bares Industry Clout*, Los Angeles Times (Aug. 26, 2001).

<sup>128</sup> Meredith B. Rosenthal et al., *Promotion of Prescription Drugs to Consumers*, New England Journal of Medicine, 498–505 (Feb. 14, 2003).

<sup>129</sup> Minority Staff, Government Reform Committee, U.S. House of Representatives, *Expert Evaluation of Direct-to-Consumer Prescription Drug Advertisements* (online at [http://www.house.gov/reform/min/inves\\_prescrip/prescrip\\_drug\\_ads.htm](http://www.house.gov/reform/min/inves_prescrip/prescrip_drug_ads.htm)).

<sup>130</sup> FDA, *FDA Talk Paper: FDA Releases Preliminary Results of Physician Survey on Direct-to-Consumers Rx Drug Advertisements* (Jan. 13, 2003).

<sup>131</sup> Kathryn J. Aikin, *Direct-to-Consumer Advertising of Prescription Drugs: Physician Survey Preliminary Results*, slides 10–11, (Jan. 13, 2003).

<sup>132</sup> FDA, *supra* note 136.



physicians said DTC advertisements caused confusion about relative risks and benefits.<sup>133</sup>

While the *Talk Paper* did mention a few of the negative results in the study, each was quickly countered by an upbeat message. The result was that FDA turned a balanced study into an endorsement of direct-to-consumer advertisements.<sup>134</sup>

## Reproductive Health

In 2002, HHS impeded its ability to obtain objective scientific advice in women's health by nominating Dr. W. David Hager, a conservative religious activist, to chair the FDA's Reproductive Health Drugs Advisory Committee. The committee is charged with evaluating the safety and effectiveness of drugs for obstetrics, gynecology, and related specialties.<sup>135</sup> In the past, FDA has chosen for this important position highly respected members of the scientific community with strong credentials in the field of reproductive health.

Dr. Hager's principal experience for the position appeared to be his lobbying for a renewed safety review of the approved drug RU-486, an abortifacient, even though no significant new evidence called its safety into question. The *Lancet* described his "track record" as a researcher as "sparse."<sup>136</sup> Dr. Hager's major publications are medical books imbued with religious themes, such as offering advice that women who suffer from premenstrual syndrome should pray and read the bible.<sup>137</sup> Although ultimately not appointed chair, Dr. Hager is now a member of the committee.<sup>138</sup>

His appointment led the *Lancet* to comment:

Expert committees need to be filled, by definition, with experts. That means those with a research record in their field and in epidemiology and public health. Members of expert panels need to be impartial and credible, and free of partisan conflicts of interest, especially in industry links or in

<sup>133</sup> Kathryn J. Aikin, *supra* note 137, at slide 36.

<sup>134</sup> FDA, *supra* note 136.

<sup>135</sup> FDA, *Committee Charter: Reproductive Health Drugs Advisory Committee* (in effect through Mar. 23, 2004) (online at <http://www.fda.gov/cder/audiences/acspage/reproductivecharter1.htm>).

<sup>136</sup> *Keeping Scientific Advice Non-Partisan*, *Lancet*, 1525 (Nov. 16, 2002).

<sup>137</sup> David W. Hager and Linda Carruth Hager, *Stress and the Woman's Body* (1996) as cited in *Jesus and the FDA*, *Time* (Oct. 5, 2002).

<sup>138</sup> FDA, *Roster of the Advisory Committee for Reproductive Drugs* (online at <http://www.fda.gov/cder/audiences/acspage/reproductiveRoster.htm>).

right-wing or religious ideology. Any further right-wing incursions on expert panels' membership will cause a terminal decline in public trust in the advice of scientists.<sup>139</sup>

## Stem Cells

According to the National Institutes of Health, research on human embryonic stem cells offers great promise for those suffering from Parkinson's Disease, heart disease, Alzheimer's Disease, spinal cord injury, and diabetes.<sup>140</sup> Many social conservatives, however, see stem cell research as related to abortion.<sup>141</sup> In August 2001, President Bush banned federal funding for research on new stem cell lines. In pursuing this policy, the President provided misleading information to the public.

In a nationwide address on August 9, 2001, President Bush argued that his decision to ban research on new stem cell lines would not adversely affect patients. He claimed that "more than 60 genetically diverse stem cell lines" already existed and that research on these lines "could lead to breakthrough therapies and cures."<sup>142</sup>

After the President's announcement, stem cell researchers immediately expressed skepticism about the number and quality of available cell lines.<sup>143</sup> Soon thereafter, in a September 5, 2001, appearance before a Senate panel, HHS Secretary Thompson acknowledged that only about 24 to 25 cell lines actually had reached the state of maturity required for most research.<sup>144</sup> Some of the institutions that had stem cell lines did not have the resources to ship them safely to other labs; others had not developed the lines to the stage necessary for research.<sup>145</sup> Still other lines may have genetic problems.<sup>146</sup> The President of the

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<sup>139</sup> *Keeping Scientific Advice Non-Partisan*, *supra* note 142.

<sup>140</sup> NIH, *Stem Cells: Scientific Progress and Future Research Directions* (June 2001).

<sup>141</sup> *See, e.g., Stem-cell Research and the Catholic Church* (online at <http://www.americancatholic.org/News/StemCell/>).

<sup>142</sup> White House, *Remarks by the President on Stem Cell Research* (Aug. 9, 2001) (online at [www.whitehouse.gov/news/releases/2001/08/20010809-2.html](http://www.whitehouse.gov/news/releases/2001/08/20010809-2.html)).

<sup>143</sup> *Cell Lines Are Listed; Not All Can Be Used*, *Boston Globe* (Aug. 28, 2001).

<sup>144</sup> *Stem Cell Distribution Deal Told Science: The Federal Plan Would Speed Valued Tissue to Researchers, but Critics Cite a Ban on Their Use to Treat Patients*, *Los Angeles Times* (Sept. 6, 2001).

<sup>145</sup> *Stem Cell Research Runs into Roadblocks*, *Boston Globe* (May 12, 2002).

<sup>146</sup> *Scientists Worry How Policy Affects Them*, *San Francisco Chronicle* (Aug. 10, 2001).

American Society for Reproductive Medicine noted, “The president seems to have information far different from that of the bulk of the medical community.”<sup>147</sup>

In May 2003, NIH Director Dr. Elias Zerhouni told Congress that only 11 stem cell lines are widely available to researchers.<sup>148</sup> All of these lines are potentially contaminated by viruses as a result of being developed with mouse feeder cells. Therefore, they may not be appropriate for human use because of the potential for infection.<sup>149</sup> Addressing this problem, scientists at Johns Hopkins recently announced the discovery of a method for developing uninfected stem cell lines on feeder cells from adult humans.<sup>150</sup> Scientists cannot work with new cell lines developed with this method, however, because President Bush’s policy prohibits the use of lines developed after April 2001.

### Substance Abuse

The Administration undermined its ability to obtain scientific advice on substance abuse by using an apparent political litmus test for appointees to an important drug abuse research committee.

In 2002, Dr. William R. Miller, a professor of psychology and psychiatry at University of New Mexico, was invited to join the National Advisory Council on Drug Abuse. This advisory committee guides policy and funding on drug abuse at NIH. Before Dr. Miller could be appointed, however, an official from Secretary Thompson’s office called him to ask several questions. These questions included whether he was sympathetic to faith-based initiatives, whether he supported abortion rights, whether he supported the death penalty for drug kingpins, and whether he had voted for President Bush.<sup>151</sup>

Dr. Miller recalled that Secretary Thompson’s aide said, “I need to vet you to determine whether you might have any views that would be an embarrassment to the president.” After Dr. Miller answered that he does support needle exchange — a public health intervention proven to save lives but opposed by social

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<sup>147</sup> *Id.*

<sup>148</sup> Elias Zerhouni, Testimony before the Senate Committee on Appropriations, Subcommittee on Labor, Health and Human Services, and Education, *Federal Funding for Stem Cell Research*, 108<sup>th</sup> Cong. (May 22, 2003).

<sup>149</sup> American Association for the Advancement of Science, Center for Science, Technology and Congress, *GOP Moderates Question Bush Stem Cell Policy* (June 30, 2003) (online at [www.aaas.org/spp/cstc/news/articles2003/030630\\_stemcells.shtml](http://www.aaas.org/spp/cstc/news/articles2003/030630_stemcells.shtml)).

<sup>150</sup> *Human Adult Marrow Cells Support Prolonged Expansion of Human Embryonic Stem Cells in Culture*, *Stem Cells*, 21 (Oct. 4, 2003).

<sup>151</sup> *Advisors Put under a Microscope*, *Los Angeles Times* (Dec. 23, 2002).

conservatives — the aide responded, “That’s a problem.” When asked whether he voted for Bush, Dr. Miller said that he had not. The aide asked, “Why didn’t you support the President?”<sup>152</sup>

The aide told Dr. Miller he would determine whether his views were acceptable. Dr. Miller was never called back, and his name was not on the final list of appointees.<sup>153</sup> Informed of what happened, Dr. Donald Kennedy, past president of Stanford University and editor of *Science*, commented:

I don’t think any administration has penetrated so deeply into the advisory committee structure as this one, and I think it matters . . . . If you start picking people by their ideology instead of their scientific credentials, you are inevitably reducing the quality of the advisory group.<sup>154</sup>

## Wetlands

In March 2000, the Army Corps of Engineers proposed new protections for wetlands.<sup>155</sup> After the National Association of Home Builders filed suit,<sup>156</sup> and after President Bush took office, the Corps reversed course and moved to weaken these protections.<sup>157</sup> In the process, Interior Secretary Gale Norton suppressed scientific information and analysis that was contrary to the Corps’ new plan.

Because of the large number of wetlands at stake, it was expected that the Interior Department would provide detailed comments to the Corps on the appropriateness of the proposed rules. Scientists at the U.S. Fish and Wildlife Service, part of the Interior Department, had prepared such an analysis.<sup>158</sup> The scientists found that the new Corps proposal would “encourage the destruction of stream channels and lead to increased loss of aquatic functions.” It also found that the Corps’ own data was “overwhelmingly” against changing mining rules, another Corps proposal. The U.S. Fish and Wildlife Service criticized the Corps for its “lack of basic knowledge of the effects of these permitted losses on the environment.”<sup>159</sup>

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<sup>152</sup> *UNM Prof Says Politics Move in on Science*, Albuquerque Journal (Dec. 20, 2002).

<sup>153</sup> *Id.*

<sup>154</sup> *Advisors Put under a Microscope*, *supra* note 157.

<sup>155</sup> 65 Federal Register 12818 (Mar. 9, 2000).

<sup>156</sup> *Interior’s Silence on Corps Plan Questioned*, Washington Post (Jan. 14, 2002).

<sup>157</sup> 66 Federal Register 42070 (Aug. 9, 2001).

<sup>158</sup> *Interior’s Silence on Corps Plan Questioned*, *supra* note 162.

<sup>159</sup> *Id.*

Secretary Norton, however, failed to submit the scientists' comments to the Corps. Her spokesman stated that the Department had run out of time. This led former Fish and Wildlife director Jamie Rappaport Clark to comment, "This is just nuts . . . For Interior to stop Fish and Wildlife from commenting on something of this magnitude and importance, that's really unbelievable."<sup>160</sup>

The Corps subsequently issued rules that weakened key wetland protections.<sup>161</sup>

## Workplace Safety

The Bush Administration interfered with the independence of an important research review committee on workplace safety by rejecting the appointment of qualified scientists, apparently on political grounds.

At the National Institute for Occupational Safety and Health (NIOSH), the Safety and Occupational Health study section provides peer review of applications for research grants to study workplace injuries, basing ranking decisions on the scientific merit of the proposals. In 2002, Secretary Thompson rejected three new members nominated by the NIOSH director, all scientists with excellent credentials.<sup>162</sup> The proposed members were Dr. Laura Punnett, an ergonomics expert and professor at the University of Massachusetts; Dr. Catherine Heaney, a professor at Ohio State University who has published extensively on workplace safety; and Dr. Manuel Gomez, Director of Scientific Affairs at the American Industrial Hygiene Association.<sup>163</sup>

The rejections appear to be based on political grounds. *Science* reported that one of the rejected nominees, Dr. Laura Punnett, is an expert in ergonomics who had testified publicly in favor of efforts to reduce musculoskeletal injuries.<sup>164</sup> Shortly after taking office, President Bush sided with industry groups by signing a repeal

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<sup>160</sup> *Id.*

<sup>161</sup> *White House Relaxes Rules on Protection of Wetlands*, Washington Post (Jan. 15, 2002).

<sup>162</sup> *Advisors Put Under a Microscope*, *supra* note 157.

<sup>163</sup> *HHS Intervenes in Choice of Study Section Members*, *Science* (Nov. 15, 2002). Several of Dr. Heaney's recent publications are listed at <http://sph.osu.edu/school/faculty/publications.cfm?id=7>. Dr. Gomez is Director of Scientific Affairs at the American Industrial Hygiene Association, one of whose core values is "The right of workers and the community to a healthy and safe environment" (online at [www.aiha.org](http://www.aiha.org)).

<sup>164</sup> *Id.*; Laura Punnett, Testimony before the Senate Committee on Appropriations, Subcommittee on Labor, Health and Human Services, and Education, *Hearings to Examine the Costs, Benefits and Feasibility of the Occupational Safety and Health Administrations Ergonomics Standards*, 107<sup>th</sup> Cong. (Apr. 26, 2001).

of a national regulation to prevent musculoskeletal injuries.<sup>165</sup> Such injuries affect over 1 million workers each year, and the Institute of Medicine has found that ergonomic standards in the workplace would significantly reduce this burden.<sup>166</sup> Dr. Punnett said upon her rejection, “I think it conveys very powerfully that part of the goal is to intimidate researchers and limit what research questions are asked.”<sup>167</sup>

The head of the study panel, Dr. Dana Loomis of the University of North Carolina, commented: “Regardless of what the intention was, this creates the appearance that review panel members are being politically scrutinized, which is directly opposed to the philosophy of peer review, which is supposed to be nonpolitical and transparent.”<sup>168</sup>

### **Yellowstone National Park**

The Bush Administration has suppressed important information about continuing ecological problems at Yellowstone National Park in order to avoid international attention.

In April 2003, Deputy Assistant Interior Secretary for Fish and Wildlife and Parks Paul Hoffman wrote to the United Nations’ World Heritage Committee and requested that Yellowstone be removed from a list of parks at risk and in need of international attention. He wrote, “Yellowstone is no longer in danger.” To make this argument, Mr. Hoffman cited a reported written by Yellowstone Park staff. However, this report had apparently been substantially edited to suppress scientific information.<sup>169</sup>

A draft report in early 2003 discussed several problems that continue to threaten Yellowstone, including the degradation of water from mining toxins, a parasitic disease among native trout, and continued controversy over potentially diseased bison who stray outside park boundaries.<sup>170</sup> The final version of the report sent

<sup>165</sup> “Last-Minute” Spin on Regulatory Rite; Bush Review of Clinton Initiatives Is Said to Reshape Rules, Washington Post, A1 (June 9, 2001).

<sup>166</sup> Institute of Medicine, *Musculoskeletal Disorders and the Workplace: Low Back and Upper Extremities* (Jan. 17, 2001) (online at <http://www.nap.edu/books/0309072840/html/>).

<sup>167</sup> *HHS Intervenes in Choice of Study Section Members*, *supra* note 169, at 298.

<sup>168</sup> *Advisors Put under a Microscope*, *supra* note 157.

<sup>169</sup> *Administration, Yellowstone Staff at Odds on Park Threats*, Los Angeles Times (June 26, 2003).

<sup>170</sup> Yellowstone Park Staff, *Yellowstone National Park Site Report to the World Heritage Committee* (2003) (online at [http://greateryellowstone.org/YNP\\_site\\_report.html](http://greateryellowstone.org/YNP_site_report.html)).

by the Interior Department to the United Nation's World Heritage Committee does not include these ongoing concerns.<sup>171</sup>

The deletions led Roger G. Kennedy, former Director of the National Park Service, to tell the *Los Angeles Times*:

Tinkering with scientific information, either striking it from reports or altering it, is becoming a pattern of behavior. . . . It represents the politicizing of a scientific process, which at once manifests a disdain for professional scientists working for our government and a willingness to be less than candid with the American people.<sup>172</sup>

Mr. Kennedy also wrote a letter to the World Heritage Committee urging it not to remove Yellowstone from the list and calling Interior's letter a "deceptively bland assessment" of the park's status.<sup>173</sup> After lengthy debate, the Committee removed Yellowstone from the list, but required the United States to report back on several ongoing environmental threats and requested that the government involve independent organizations and scientists in its assessments.<sup>174</sup>

## CONCLUSION

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Federal agencies with global reputations for scientific excellence depend upon the objective input of leading scientists and the impartial analysis of scientific evidence to develop effective policies. The Bush Administration, however, has repeatedly suppressed, distorted, or obstructed science to suit political and ideological goals. These actions go far beyond the traditional influence that Presidents are permitted to wield at federal agencies and compromise the integrity of scientific policymaking.

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<sup>171</sup> Department of the Interior, *Yellowstone National Park Site Report to the World Heritage Committee* (Feb. 2003) (online at [http://greateryellowstone.org/DOI\\_site\\_report.pdf](http://greateryellowstone.org/DOI_site_report.pdf)).

<sup>172</sup> *Administration, Yellowstone Staff at Odds on Park Threats*, *supra* note 175.

<sup>173</sup> Letter from Roger G. Kennedy to Francesco Bandarin, Secretary of the UNESCO World Heritage Committee (June 25, 2003) (online at [http://greateryellowstone.org/kennedy\\_letter.html](http://greateryellowstone.org/kennedy_letter.html)).

<sup>174</sup> *Park Will Be off List; World Panel Still Worried*, *Billings Gazette* (July 2, 2003).