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SUNSET COMMISSION PROPOSALS WOULD NOT PROVIDE “GOOD GOVERNMENT”

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Summary

The House Government Reform Committee on July 20 approved, on close to party-line votes, two bills that would establish “sunset commissions.” These sunset commission proposals could be considered by the full House as early as the week of July 24.

The two bills before the Government Reform Committee are H.R. 5766, introduced by Representative Todd Tiahrt (R-KS), and H.R. 3282, introduced by Rep. Kevin Brady (R-TX). A somewhat different sunset commission proposals has been proposed by the Bush Administration.¹ In the Senate, a sunset commission proposal is included in far-reaching budget process legislation (S. 3521) that the Senate Budget Committee approved on June 20.

These sunset commission proposals have been promoted by their sponsors as “good government” reforms to increase efficiency and reduce waste. Examination of these proposals shows, however, that they have a darker side. Under the two sunset commission proposals that the House Government Reform Committee will consider, as well as under the other leading proposals, extensive program

KEY FINDINGS

- The President and Congressional Republican leaders are advocating “sunset commission” proposals, which are expected to come to the House floor in late July.
- The leading sunset bills before Congress have a distinctly partisan slant. A bare majority of commission members, appointed by Republican leaders, could recommend elimination of various programs and agencies, as well as of various rules and regulations. The programs, agencies, and rules and regulations could then be eliminated without a single vote in favor of elimination being cast by a member of the minority party either on the commission or in Congress, and with members of the minority party barred even from offering amendments on the House floor.
- Successful commissions traditionally are formed to operate in a bipartisan fashion. The pending sunset-commission proposals, in contrast, would make it possible for program terminations and cuts to be implemented on a strictly partisan basis, even if they do not have enough support to be enacted under normal procedures.
- Moreover, the commission’s mission itself would be ideologically skewed. The commission would be prohibited from proposing to eliminate or scale back any of what the GAO, OMB, and CBO refer to as “tax expenditures,” which are the roughly \$800 billion spent each year on special interests and others through the tax code.

¹ Rep. Brady also introduced H.R. 3277, which is a version of the Administration’s proposal.

terminations and reductions could be achieved through the use of extraordinary procedures. Far-reaching proposals to terminate or radically alter programs could be developed by a sunset commission and put into effect on a purely partisan basis, without any support at any stage of the process from a single member of the minority party and with minority-party members of Congress prohibited even from offering amendments at any stage of Congressional consideration. In addition, in some versions of sunset-commission legislation, including H.R. 3282 (the Brady bill), programs and agencies targeted for elimination by the sunset commission could be abolished even if Congress *declined* to approve the commission's proposals.

Proponents of these proposals may argue that a sunset commission would identify wasteful, duplicative, or outdated programs that could be eliminated or realigned and could help to build broad bipartisan consensus in support of legislation to make such changes. If the proposal were designed in a manner to foster such a result, few would quarrel with it. That, however, is not the probable result of the leading sunset-commission proposals.

- The commissions established under all of the leading sunset-commission proposals would likely have a distinct partisan (and ideological) slant. Under H.R. 5766 (the Tiahrt bill), the President would appoint seven members to the sunset commission.² He would be required to consult with Congressional leaders on the appointment of four of the members of the commission. (He would be required to consult with the Speaker of the House on one appointment, the Minority Leader of the House on another, and so forth.) Assuming the President would take the consultation seriously, there would be a 5-2 partisan majority on the commission.
- Similarly, under Rep. Brady's bill (H.R. 3282), the likely result would be an 8-4 partisan majority on the commission. The Speaker of the House and the Majority Leader of the Senate each would appoint *six* members of the commission, four of whom would be members of Congress and *two* of whom would be appointed with the consent of the minority leaders of that chamber. Eight of the 12 commissioners thus would have to be Senators or Representatives, with those eight commissioners evenly divided between the two parties. But the other four members of the commission could be appointed without any input from the House and Senate Minority Leaders and could all be affiliated with the majority party. This would produce a likely 8-4 partisan majority on the commission (as long as one party controlled both houses of Congress).
- These partisan majorities on the commissions would be extremely significant, because *only a simple majority of the commission* would be needed for the commission to approve its recommendations and submit legislation to write them into law. The commission's recommendations thus could be developed and adopted on a strictly partisan basis.
- The problems caused by the partisan way in which of the commission could conduct its business would then be exacerbated by another critical feature of all of the leading proposals — the proposals all include a mechanism to enable agencies and programs to be eliminated regardless of whether legislation to accomplish that end could be enacted through the regular legislative process. The Tiahrt bill (H.R. 5766) would provide for fast-track consideration of legislation embodying sunset commission proposals “to reorganize, consolidate, abolish, expand, or transfer the Federal programs and agencies reviewed by the Commission.” If the congressional committee or committees with jurisdiction over the proposed changes either did

² This bill provides permanent authority for the establishment of sunset commissions, with no limits on the number of commissions that could be empanelled or when they could be established.

not report this legislation within 30 days or reported the proposal favorably without amendments, the bill would be considered by the full House under rules that would limit debate to no more than 10 hours and *prohibit* consideration of *any* amendment on the House floor. Since this procedure would be followed even if the committee(s) of jurisdiction did *not* report the legislation, a committee chairman could ensure that minority members of the committee had no opportunity to offer amendments in committee simply by declining to schedule a committee markup.

Under these special procedures, the Congressional steps that normally can be used to try to develop consensus — committee mark-ups and the offering and consideration of amendments on the floor of the House — would be dispensed with.³ As a result, a series of far-reaching recommendations entailing sharp program eliminations, cuts, and program mergers (such as the replacement of various programs with block grants) could be developed in the sunset commission on a purely partisan basis and brought to a vote on the House floor, with the minority party barred from offering amendments at any point.⁴ Changes in *any* federal program — including entitlement programs such as Medicare and Social Security, as well as programs funded through annual appropriations — could be within the scope of a sunset commission appointed pursuant to the Tiahrt bill. In addition, an amendment adopted by the House Government Reform Committee broadened the commission’s scope so it also propose the abolition of rules and regulations promulgated by agencies, which could facilitate the elimination of various rules that regulate businesses in the public interest (to ensure consumer safety, clean food and water, etc.) through the use of the special procedures that the bill establishes.

- The Brady bill (H.R. 3282) would use the regular legislative procedures for consideration of the commission’s legislative proposals, but it would require that every federal agency be *automatically abolished* one year after the sunset commission completed its review of the agency, unless new legislation to reauthorize the agency or temporarily extend the expiration date was enacted within this one-year window. (Under the Brady bill, the sunset commission would operate through 2030, with every federal agency being reviewed at least once every 12 years, and with the commission submitting legislative proposals every year. New commission members would be appointed as existing members’ terms expired.) If an agency is abolished, the programs administered by that agency — and rules and regulations enforced by the agency — presumably would effectively be abolished as well (unless legislation is enacted that provides for the programs, rules, and regulations to be administered and enforced by another agency).⁵

³ If the committee of jurisdiction reports the commission’s proposed legislation unfavorably, without recommendation, or with an amendment, the commission legislation would then be considered under the regular rules of the House. But the majority-party members of the committee could ensure that the legislation would instead be considered by the full House under the fast-track procedures by declining to report the bill or reporting the bill without an amendment (which would not require any support from minority-party members of the committee).

⁴ Although it presumably assumes fast-track procedures would be used in the Senate for consideration of the commission proposals, H.R. 5766 says only “language to be provided” under its “Consideration in the Senate” section.

⁵ When essentially the same proposal was considered by the House in 2004, one of the cosponsors of the plan (then-Representative Jim Turner, Democrat of Texas) maintained that “...the laws administered by these agencies do not sunset....We specifically have language here to ensure that the laws that administer various programs, and that are important to a lot of constituencies, do not disappear when the agency disappears.” (*Congressional Record*, June 24, 2004, page H4975.) In fact, despite this claim, made to reassure members who were considering whether to vote for the proposal in 2004, there was *no* language in the 2004 legislation — and there is no language in the current Brady bill — that provides that programs administered by an agency that is abolished would not be abolished themselves or that specifies how such programs would be administered.

This requirement would enable Members of Congress who sought to kill various programs or agencies to try to achieve that result by blocking consideration of legislation to reauthorize the agencies within the one-year period. Alternatively, the President could kill agencies simply by vetoing legislation to reauthorize them and having his veto sustained by one-third of either the House or the Senate. In this manner, agencies could be killed even if they enjoyed broad public support and legislation to eliminate the agency could not pass itself.

The sunset-commission proposals thus go far beyond merely establishing a commission to study federal programs and make recommendations to Congress. These proposals would establish new procedures that could be used on a narrow partisan basis to ram through terminations or dramatic reductions in funding for a range of programs that could not otherwise pass Congress.

The ideological tilt of the proposed commission legislation is illustrated by the fact that under all of the leading sunset commission bills, the commission would be prohibited from proposing to eliminate or scale back any of the nearly \$800 billion a year of measures in the tax code that the Joint Committee on Taxation and OMB have termed “tax expenditures” (and Alan Greenspan has referred to as “tax entitlements”) because they involve spending through the tax code. Thus, if the commission were to conclude that a tax expenditure duplicates or conflicts with a spending program and that the federal effort in this area should be consolidated, it would have to recommend elimination of the spending program instead of the tax expenditure even if it concluded that the spending program is a more efficient means of providing the desired results.

Nor would the commission be likely to add much knowledge about shortcomings in the operations of federal programs and how programs might be improved. As explained below, the Office of Management and Budget, the Congressional Budget Office, and the Government Accountability Office all produce substantial amounts of information on these matters. The proposed commission would likely add little to the extensive information that these institutions already produce.

This analysis now proceeds to examine these issues in more detail.

Sunset Commission Proposals Are Unlikely to Produce Promised Results

Proponents of sunset commission proposals argue that a commission would help to eliminate wasteful or duplicative federal programs and expenditures. The adoption of any of the leading sunset commission proposals, however, would likely produce results quite different from what the rhetoric surrounding these proposals would suggest.

A Sunset Commission is Unlikely to Result in Useful New Information

One argument for a sunset commission is that it would produce a significant amount of new, objective information that would help the President and Congress eliminate or reorganize wasteful or inefficient federal agencies and programs. Yet it is unlikely that such a commission would have this result, since an enormous amount of information about federal programs already is available to the President and Congress. (Nor is there any reason to believe that the production of additional useful information is dependent on the existence of a sunset commission.)

The Office of Management and Budget, the Congressional Budget Office, and the Government Accountability Office all produce reams of information about the operations of federal programs and changes in those programs that might reduce costs. OMB, for instance, oversees the Program Assessment Rating Tool (PART) program, which it says is designed to assess “how well a program is performing, so the public can see how effectively tax dollars are being spent.”⁶ According to OMB, the performance of *all* federal programs will have been assessed under PART by the end of 2006.

Furthermore, according to OMB, the PART assessments already provide exactly the kind of information that the sunset commission proposals envision: “Sometimes, a program assessment finds that a program is duplicative of other, better run programs or even that the program has already fulfilled its original purpose. In cases such as these, one of the follow-up actions might be to work with the Congress to end, or terminate, the program.”⁷ Questions have been raised about whether the information provided by the PART process appropriately and objectively determines whether a program is effective and efficient, but there is no reason to believe that a sunset commission would improve the quality of such information, especially since the commission likely would rest heavily on the work that OMB’s PART process produces.

The Congressional Budget Office periodically publishes a *Budget Options* report, which includes numerous possible changes (more than 200 in the most recent volume) in federal programs or taxes that could be used to reduce the deficit.⁸ CBO does not make recommendations to the Congress, but the *Budget Options* volume contains arguments for and against reducing or eliminating various programs, including claims that a program is inefficient or is not accomplishing its stated goal.

Finally, the GAO publishes hundreds of reports every year assessing the performance of government programs and recommending changes that could make the programs more efficient. In particular, GAO’s Performance and Accountability series of reports focuses on program areas “at high risk due to either their greater vulnerabilities to waste, fraud, abuse, and mismanagement or major challenges associated with their economy, efficiency, or effectiveness.”⁹

The Sunset Commission Bills are Unlikely to Produce Bipartisan Compromise Recommendations

In certain circumstances, a commission may be a useful mechanism to help the President and legislators of both parties reach agreement on steps that need to be taken to achieve some shared goal. For example, the “Greenspan Commission” helped forge the compromise Social Security legislation that was enacted in 1983, with the support of President Reagan, House Speaker Thomas P. O’Neill, and other Democratic and Republican members of Congress. That legislation extended the solvency of Social Security for a number of decades.

The Greenspan commission was successful, however, because there was widespread agreement that extending the solvency of Social Security was crucial, that it would take a mix of policy changes

⁶ OMB’s ExpectMore.gov website explanation of the PART program, <http://www.whitehouse.gov/omb/expectmore/about.html>

⁷ Ibid.

⁸ Congressional Budget Office, *Budget Options*, February 2005, <http://www.cbo.gov/ftpdocs/60xx/doc6075/02-15-BudgetOptions.pdf>

⁹ For links to some of these reports, see GAO’s website: <http://www.gao.gov/pas/2005/>

(including both tax increases and benefit reductions) to accomplish that goal, and that the only way to pass the necessary legislation was with broad, bipartisan support. The commission was not viewed by either side as an attempt to ram through a partisan agenda that could not be enacted through the regular legislative process. The appointees to the commission reflected the desire of the President and Congressional leaders of both parties to develop a truly bipartisan approach to the problem. The fact that no legislation could have been enacted without broad bipartisan support encouraged the commission to produce a recommendation that represented a thoroughly bipartisan compromise.

Unfortunately, the conditions that exist today do not seem conducive to a commission like the Greenspan Commission. For instance, while we once again face the prospect that Social Security will become insolvent without changes in policy (although insolvency is not as imminent as it was in 1983), there is not yet general agreement among lawmakers that it will require a mix of policy changes on both the tax and benefit sides to solve the problem and that there must be broad, bipartisan support to enact such legislation. In 2001, for instance, President Bush named seven Republican and seven Democratic members to a Social Security commission, but limited the appointments to people who supported his proposal to divert a portion of Social Security taxes to establish personal savings accounts and who were willing to rule out closing even a modest fraction of the Social Security shortfall through measures to increase Social Security tax revenues. As a result, the commission did not produce a recommendation that could achieve the widespread, truly bipartisan support needed to achieve the necessary reforms in Social Security.

Similarly, although the appointees to President Bush's tax reform commission had somewhat more diverse views than his Social Security commissioners, they were required to agree to produce a reform plan that would produce a level and distribution of revenues consistent with what will occur under the current tax system if the President's 2001 and 2003 tax cuts are made permanent, a condition that made the development of widespread bipartisan support for the panel's recommendations virtually impossible.

The proposed sunset commission bills suffer from a similar problem. They would be charged with recommending terminations or reductions in federal programs, but this charge would *not* include the examination of any of the nearly \$800 billion a year of measures in the tax code that the Joint Committee on Taxation and OMB have termed "tax expenditures" (and Alan Greenspan has referred to as "tax entitlements") because they involve spending through the tax code. If the commission were to conclude that a tax expenditure duplicates or conflicts with a spending program and that the federal effort in this area should be consolidated, it would have to recommend elimination of the spending program instead of the tax expenditure even if it concluded that the spending program is a more efficient means of providing the desired results. This skewing of the commission's mission, along with the current partisan political climate, make it unlikely that such a commission would produce recommendations that could attract widespread bipartisan support. (Indeed, the fact that all of the sunset commission proposals contain some mechanism to enable programs to be eliminated or reduced *without* such actions being approved through the regular legislative process itself suggests that the proposals' authors do not anticipate that the commission's recommendations would engender broad, bipartisan support.)

And the fact that, as noted, either all or a sizable majority of the commission's members would be appointed by the party in power only aggravates this problem.

- Under the Tiahrt bill (H.R. 5766), as well as under the Bush Administration’s sunset commission proposal, the President would appoint all seven commission members. (He would be required to consult about one appointment each with the Speaker of the House, the Majority Leader of the Senate, the Minority Leader of the House, and the Minority Leader of the Senate.) This would lead to a 5-2 partisan majority on the commission.
- Under the Brady bill (H.R. 3282), the Speaker of the House would appoint six members of the commission and the Majority Leader of the Senate would appoint the other six members, with two of the six members in each case required to be members of the minority party who are appointed with the consent of the Minority Leader of the relevant body.¹⁰ If one party controls both Houses of Congress, this would lead to a 8-4 partisan majority.
- Under the sunset commission provision contained in budget-process legislation introduced by Senator Judd Gregg and approved by the Senate Budget Committee on June 20 on a party-line vote, the President, the Speaker of the House, the Minority Leader of the House, the Majority Leader of the Senate, and the Minority Leader of the Senate each would appoint three members of the commission. This would result in 9 commission members being appointed by Republican leaders and 6 by Democratic leaders.

The rules regarding the appointment process and the composition of the commission are of particular importance because, as also noted above, all of the proposals require only a simple majority vote for the commission to approve the recommendations it sends to Congress and the President. Bipartisan support on the commission would be unnecessary.

Proposals Include New Procedures to Achieve Program Cuts That Could Not Be Enacted Under Normal Legislative Procedures

The leading sunset commission proposals also would alter normal budget procedures to make it easier to achieve the elimination of a wide array of programs with the support of only a bare, partisan majority.

- The Tiahrt bill, the President’s plan, and Senator Gregg’s plan all provide “fast-track” procedures for Congressional consideration of the proposals that the sunset commission submits. The President’s plan and Senator Gregg’s plan would require an up-or-down vote on the commission’s proposals with limited time for debate — and with *no amendments allowed*. The Tiahrt bill, as well, also would require the House to vote up or down on the commission proposals with no amendments allowed, unless a committee with jurisdiction over a particular proposal rejected or amended it. It should be noted that, under the Tiahrt bill, if the chairmen of committees of jurisdiction decline to schedule a markup of the commission legislation, the fast-track procedures limiting debate and prohibiting amendments would take effect. This means that by declining to schedule a markup, chairmen could ensure that members of the minority party would never have an opportunity to offer amendments that might pass.

¹⁰ Four of the commission members appointed by the Speaker would have to be members of the House and four of the commission members appointed by the Senate Majority Leader would have to be Senators. In each case, two of the appointees would have to be approved by the Minority Leader of the relevant body. Thus there would be an even partisan split among the commission members who are sitting members of Congress. But the other four members of the commission could all be affiliated with the majority party.

Why BRAC is Different

Proponents of sunset commission legislation sometimes argue that the experience with the Base Realignment and Closure (BRAC) process shows it is necessary to establish special procedures to ensure that beneficial proposals recommended by an expert commission are implemented. This argument ignores the special circumstances surrounding decisions to realign or close military facilities that the BRAC process was designed to overcome.

Under BRAC, a commission appointed by the President, subject to consultation with Congressional leaders and confirmation by the Senate, reviews Department of Defense recommendations for realignment and closure of military facilities.* After extensive hearings and a review of the Defense Department recommendations by the GAO, the commission submits its recommendation for facilities to be realigned or closed. If the President approves those recommendations, they go into effect if Congress does not enact legislation disapproving the recommendations in their entirety within 45 days.

Some observers credit the BRAC process with facilitating necessary and desirable reductions in the number and size of military facilities that would have proved impossible to achieve in the absence of the BRAC process. If so, however, that does not mean a similar process would be appropriate to achieve the realignment or elimination of federal programs. BRAC was established to deal with a unique situation created by the dual benefits that military facilities provide — the benefits from the defense capabilities they provide (which accrue to all Americans and to other people around the world) and the economic benefits they provide to the communities in which they are located. There was widespread agreement starting in the 1980s that the United States had many more military bases and other facilities than were needed to provide for the national defense. Lawmakers who supported reductions in the number of bases, however, could not support legislation that would close bases in their own districts or states. The BRAC process provided a means to get around the peculiar geographical problem related to base closings.

Proponents of a sunset commission may argue that the problem we face with lawmakers who support reducing federal spending in general, but oppose legislation eliminating various specific programs, is the same problem that BRAC dealt with. That is not the case. There is a very large difference between allowing a commission to determine which particular military bases in which geographic locations (all of which serve the purpose of providing for the national defense) will be closed and deciding which programs (which serve numerous, different purposes) will be eliminated or cut. Moreover, decisions regarding terminations or reductions in programs generally do *not* involve decisions that single out some geographic locations while sparing others. The geographical decisions about which bases to close are ones that experts on a commission can probably make more appropriately than members of Congress who must try to protect their home districts or states. In contrast, decisions about which programs are truly important and necessary to the nation are exactly the sort of decisions that elected officials in a democracy are supposed to make, through a process that allows for full and open debate.

* The BRAC process was initially established in 1988, and (with some subsequent changes in the process) has also been used in 1991, 1993, 1995, and 2005. The desire to maintain an ongoing BRAC process, the technical nature of the decisions being made by the commission, and the requirement for Senate confirmation of commission members seems to have led to a more bipartisan approach to BRAC than would likely be the case with the sunset commissions that would be established under the proposals discussed here.

The normal legislative steps that tend to encourage consensus — committee markups, consideration of amendments on the House and Senate floors, and the need to assemble a filibuster-proof coalition in the Senate — thus would largely be eliminated and replaced with a process that facilitates the passage of legislation by a bare majority, with little or no support from the minority party and with the minority party prohibited from offering amendments. (By contrast, if recommendations to eliminate or sharply cut programs had to be considered

under the regular legislative process, a recommendation that lacked bipartisan support would almost certainly falter.)

- Under the Brady bill (H.R. 3282), the commission’s proposals would be considered under the regular legislative procedures, but every federal agency would be automatically abolished one year after the sunset commission completed its review of the agency (the bill requires that each agency be reviewed at least once every 12 years), unless legislation is enacted during the one-year interval to reauthorize the agency. Proponents of eliminating a particular agency could try to achieve that result under Rep. Brady’s bill by blocking consideration of legislation to authorize the agency during the one-year period. Furthermore, if the President wanted to eliminate the agency, he could do so by vetoing the legislation reauthorizing it. If just over one-third of the members of either the House or the Senate voted to uphold his veto, the agency would be killed — even if it enjoyed wide support in both the House and Senate and legislation to eliminate it could not have come close to securing Congressional approval.¹¹

Conclusion

The name “sunset commission” suggests a mechanism to shed light on the operations of the federal government and to allow democratic consideration of ways to improve how the government serves the citizens of the United States. The sunset commission proposals before Congress, however, would instead set up a process that would allow those who seek to eliminate or reduce a wide array of significant programs to achieve their goals *without* having to go through the regular legislative process, which provides an opportunity to amend such measures. The sunset-commission bills would allow the use of highly unusual procedures that would enable a bare partisan majority to seek to ram through radical changes in the federal government, with members of the minority party effectively shut out of the process. That hardly qualifies as a “good government” reform or a way to strengthen the democratic process.

¹¹ The President’s proposal contains a similar provision. In addition to proposing fast-track consideration of legislation embodying the sunset commission’s proposals (with no amendments allowed), it provides that agencies *and programs* be automatically abolished within two years after the commission’s proposals regarding these agencies or programs are submitted to Congress, unless legislation is enacted in that two-year period reauthorizing the agencies and their programs. Under the President’s proposal, if Congress fails to act to reauthorize an agency or program, the agency or program is automatically abolished, even if the commission did *not* recommend termination of the agency or program and called for no or only minor changes in how the agency or program operates.