WORLD RESOURCES INSTITUTE

POLICY NOTE

INSTITUTIONS AND GOVERNANCE

PRESIDING WITH PRINCIPLE

Restoring Good Governance in the U.S. Executive Branch, and Why Voters Should Care

REMI MONCEL

SUMMARY

The 44th President of the United States will enter office faced with an unprecedented set of complex and urgent challenges, including a fragile financial system, spiraling energy and food prices and renewed demands for leadership to combat global warming. To succeed, the President needs to respond with a combination of strong leadership, participatory democracy and informed decision-making that reflects principles of good governance and respect for the rule of law. This paper describes how social and environmental objectives have been undermined when past administrations have failed to respect these basic principles. Given the unprecedented nature of the challenges ahead, it is especially important that the next President of the United States, Democrat or Republican, lead a government driven by **transparency, inclusiveness and accountability** in decision-making.

A **transparent** government recognizes that all government-held information – subject to narrow exemptions – should be made publicly available in a timely manner and proactively discloses the information upon which its decisions are based, the sources of that information and the names and affiliations of those involved in decision-making.

An **inclusive** government pursues the balanced and well-informed participation of citizens, civil society organizations and representatives from the private sector across the political, ideological and socio-economic spectrum to create a policy-making process that is respectful of sound science and a diversity of views.

An **accountable** government is bound by the rule of law, respects constitutionally enshrined checks and balances, is aggressively both open and responsive to the scrutiny of the public and the media, and enforces the law of the land in a non-partisan and even-handed manner.

This note reviews the practices of previous administrations in the context of relevant constitutional and legislative provisions, and attests to the vulnerability of a system of delicate checks and balances to abuse of power. It brings to light significant negative impacts that have resulted from an opaque and unchecked presidency and makes the case for better governance in the next administration.

Specifically, this note demonstrates that:

- Government-held information should be made available to the public unless limited and clearly articulated exceptions apply. Task forces and ad-hoc committees, not otherwise governed by formal rules, should conduct their work in a transparent and inclusive manner by making publicly available the content of their deliberations as well as the names and affiliations of the participants.
- The President should not issue signing statements to disregard or decline to enforce a law or to interpret it in a manner inconsistent with the will of Congress. In addition, executive branch officials and agencies should cooperate with Congress in its oversight duties, limit the exercise of discretionary power and abstain from asserting executive privilege to shield the administration from legitimate congressional oversight and requests for disclosure of information. Congress on the other hand should reaffirm its oversight responsibility and take necessary measures to exercise its duty even when faced with a reluctant executive branch.
- The President should guarantee the non-partisan enforcement of the law and the scientific integrity of federal agencies by appointing administrators that will respect the advice of technical and scientific experts, pursue the non-partisan prosecution of the law and interpret legal provisions in a non-partisan and even-handed manner. The President should protect the right of scientists and researchers to publicly review and comment on documents that use their research or work. Finally, the political review and communication of findings should not undermine the integrity and independence of scientific data and analysis.

10 G Street, NE Washington, DC 20002
Tel: 202-729-7600 Fax: 202-729-7610
www.wri.org

www.wri.org/governance

OCTOBER 2008

Transparency and Inclusiveness in Decision-making

In response to concerns about conflicts of interest in the Nixon White House, Congress enacted a series of anti-secrecy laws intended to open the government's deliberation processes to public scrutiny. The 1976 Government in the Sunshine Act applies to collegial bodies of two or more individuals that govern federal regulatory agencies and requires that, as a general rule, discussions and records be made publicly accessible. The law states that "every portion of every meeting of an agency shall be open to public observation."[1] A narrow set of exemptions accompanies this standard to ensure the protection of sensitive information relating to national security, proprietary information or personal privacy. The 1972 Federal Advisory Committee Act (FACA) imposes that federal advisory committees disclose their proceedings and documents. An exemption exists for "committ[ees] which [are] composed wholly of full-time officers or employees of the Federal Government."[2] Despite the general intent of openness of the law, from 1997 to 2006, the percentage of meetings falling under FACA which were completely closed to the public oscillated between 50% and 64% each year.[3] The following two examples from the health and environmental policy areas illustrate how government secrecy can undermine open and effective decision-making.

The Clinton Task Force on National Health Care Reform. In 1993, President Clinton created a task force to devise a universal health care plan which would cover all Americans.[4] Convening some 500 members, the initiative soon faced opposition from interested parties – in particular pharmaceutical companies and medical associations – which decried the lack of transparency surrounding the work of the task force and its unwillingness to disclose the identity of its members and advisors.[5] Still regarded as one of President Clinton's top tactical missteps, the opaque and exclusive deliberations of the task force contributed to its demise. In the end, the initiative failed to deliver a technically viable and politically acceptable plan to reform the United States' health care system.

The Cheney Energy Task Force. In 2002, David Walker, Comptroller General of the United States, led an attempt to retrieve factual information concerning the development of the National Energy Policy proposal made by Vice President Cheney in his role as Chair of the National Energy Policy Development Group. In January 2001, President George W. Bush launched the "Cheney Energy Task Force" with a view to "developing a national energy policy designed to help the private sector, and government at all levels, promote dependable, affordable, and environmentally-sound production and distribution of energy for the future."[6] The names and affiliations of the cabinet-level and other senior federal officials participating in the task force chaired by the Vice President as well as the identity of participants in "stakeholder meetings" took years to be released. The various requests for disclosure and lawsuits led by environmental and justice groups and the Government Accountability Office faced continued resistance.[7] As David Walker put it, "failure [by the executive branch] to provide the information we are seeking serves to undercut the important principles of transparency and accountability in government."[8] The lack of participation of civil society groups, technical experts and a diverse set of private sector representatives resulted in an energy plan with little public support. In addition, it offered no comprehensive strategy to address the United States' dependence on foreign oil, respond to the pressing threat of global warming or curb soaring energy and fuel prices.

These examples show that, in addition to greater expertise, public participation increases public trust and acceptance of decisions. These cases also dented the credibility of the two Presidents and their respective parties on themes which have been spotlighted in the 2008 presidential campaign.

Governance Recommendation #1

TRANSPARENCY AND INCLUSIVENESS

Government-held information should be made available to the public unless limited and clearly articulated exceptions apply. Task forces and ad-hoc committees, not otherwise governed by formal rules, should conduct their work in a transparent and inclusive manner by making publicly available the content of their deliberations as well as the names and affiliations of the participants.

Accountability and Respect for the Rule of Law

The principle of checks and balances enshrined in the U.S. Constitution is meant to preserve the delicate balance of powers inherent to a stable democracy. By keeping the duties and membership of the executive, legislative and judicial branches of government distinct, the Constitution's separation of powers keeps the authority and influence of each branch in check. Nonetheless, Presidents have exploited the Constitution's ambiguities to blur the boundaries between congressional and

presidential authority in their favor. Controversial from a legal point of view, such exercise of presidential power can result in the weakening of necessary environmental, safety, health and civil rights provisions and undermine certain accountability mechanisms which stand as pillars of a well functioning democracy. Signing statements and claims of executive privilege constitute two examples of how accountability and respect for the rule of law can be undermined.

Signing Statements. While not explicitly authorized to do so by the Constitution, Presidents have increasingly used signing statements – written or verbal pronouncements issued upon signing a bill into law – in a way that has been criticized as violating their constitutional duty to ensure that laws are faithfully carried out. President James Monroe issued the first signing statements in the early 19th century, and most have been rhetorical in nature since then, serving "a largely innocuous and ceremonial function."[9] More recently however, Presidents have used signing statements to "condemn a provision of the new law as unconstitutional and announce the President's refusal to enforce the unconstitutional provision."[10] Recent Supreme Court rulings do not directly address the legality of signing statements. Rather, opinions emerging from related issues have created confusion on whether the President can depart from legislation enacted by Congress. Many legal scholars and a 2006 report from the American Bar Association's blue ribbon task force argue that this practice violates the separation of powers and the Constitution and in particular the "Take Care Clause" of Article II, §3 which requires the President to enforce all provisions of the law. In addition, the provisions of Article I §7 regarding the passage of bills grant the President only two powers: the signing of a bill in full into law and a veto. "If he approve he shall sign it – the Constitution reads – but if not he shall return it, with his objections to that House in which it shall have originated." These views are supported by the 1998 Supreme Court case in which Congress had expressly delegated to the President the right to use a line-item veto. The Court ruled that while the President may veto a bill which does not meet his or her agreement, s/he does not have the authority to selectively apply certain provisions of a law after signature.[11] Proponents of signing statements, however, argue that the President's constitutional duty to "preserve, protect and defend the Constitution of the United States" requires him to disregard legal provisions that would violate it. Justice Scalia's concurring opinion – joined by three other justices – in a 1991 Supreme Court ruling supports this view by stating that the President may resist legislative encroachment through several means, including "the power to veto laws […] or even to disregard them when they are unconstitutional."[12] Sharply increasing in frequency during Ronald Reagan's presidency, the practice of signing statements was continued at the same pace by George H.W. Bush and William Clinton. More controversially yet, a 2006 study revealed that President George W. Bush had by that time resorted to signing statements to decline enforcement of over 750 legal provisions, which was more than any President in American history.[13] According to a survey conducted by professor Christopher S. Kelly of Miami University of Ohio, the number of provisions had escalated to over 1,100 in July 2008.[14]

The case of the Energy Policy Act of 2005 illustrates the way in which Presidents can use signing statements to bypass strict environmental and safety standards established by law. The act extends the whistleblower protections included in the Energy Reorganization Act of 1974 to members of the Nuclear Regulatory Commission, Department of Energy and federal contractors who report safety violations in nuclear waste management.[15] These provisions assert employees' rights to testify before Congress without fear of retaliation from their employer. Notwithstanding the stricter security standards established by Congress, President Bush declared in a signing statement that "the President or his appointees will determine whether employees of the Department of Energy and the Nuclear Regulatory Commission can give information to Congress."[16] Beyond environmental policy, signing statements have been issued for bills relating to foreign policy, national security and government oversight.[17] In addition to representing a shift of power away from Congress, these pronouncements of non-enforcement can weaken important health, safety and civil rights safeguards.

Congressional Oversight: the example of Executive Privilege. In addition to making laws, Congress is entrusted by the Constitution, public laws and house and senate rules with the oversight of executive branch activities. Congressional oversight is a fundamental feature of government based on checks and balances. It can be defined as "the review, monitoring, and supervision of federal agencies, programs, activities, and policy implementation" – in short, it is the process by which Congress "check[s] on, and check[s], the executive."[18] Reluctant to disclose the entirety of the documents requested by Congress in the course of its oversight activities, the executive branch developed the controversial concept of "executive privilege"

which, because of the presidency's discretion in assessing its scope, can be regarded as a way for the executive branch to expand its jurisdiction, autonomy and potentially conceal unlawful practices.

Executive privilege is a concept used by the executive branch to withhold presidential communications, advice and national security information from disclosure in judicial proceedings and congressional investigations.[19] While Dwight Eisenhower coined the term, the practice of executive privilege spans from George Washington's presidency to the current era and involves both Republican and Democratic Presidents.[20] Presidents have argued that shielding presidential communications from public scrutiny preserves the quality and candidness of presidential advice. In fact, executive privilege can be regarded as a delicate balancing act between the right to information and oversight of the Congress and the executive branch's right to confidentiality over deliberative and decision-making documents. Assessment of the legality of this practice can be found in federal case law. During the Nixon presidency, the Supreme Court recognized "the valid need for protection of communications between high government officials and those who advise and assist them in the performance of their manifold duties."[21] Importantly however, the Supreme Court went on to reject the President's claim that the privilege was absolute. The presumption of privilege can be overcome by an appropriate showing of public need by the branch seeking access to the conversations.[22] The courts rejected a number of claims made by recent administrations of both major parties. Such was the case in In re Sealed (Epsy), involving Clinton and Judicial Watch on a claim of executive privilege asserted by G.W. Bush.[23] Finally, it is important to note that the vast majority of conflicts between the executive and legislative branches have been resolved through political negotiation and did not reach the courts. In the few that did, the judiciary was reluctant to intervene decisively on this concept, often calling for good faith and cooperation between the legislature and the executive.[24]

A look at presidential practice from the last three decades shows that executive privilege has been claimed by all Presidents although the scope and number of assertions varied. For example, while Ronald Reagan supported a rather narrow interpretation of the privilege's scope, George H.W. Bush and William Clinton advocated a more expansive approach where communications within the White House or between the White House and any federal department or agency were presumptively privileged.[25] The controversy over executive privilege largely stems from the fact that it may be claimed for political purposes or to conceal unlawful practices.

Disclosing decision-making records at the presidential level may reveal a political intrusion of the President into a decision entrusted with agency staff and scientists. For example, what reasoning led President Bush to weaken the Environmental Protection Agency's (EPA) proposed limits on smog-forming ozone in March 2008? The communications between EPA staff and the President may contain the elements necessary to answer this question. In the course of a congressional subpoena to retrieve these documents, the EPA informed Congress on June 19, 2008 of the President's decision to exert executive privilege to withhold about twenty-five percent of the material documenting such communications. The Department of Justice argued that these should be protected to ensure that the President receive candid advice from counsels without fear of being exposed to the public.[26] On the other hand, the House Committee on Oversight and Government Reform argued that executive privilege might have been claimed to conceal a political move to overturn a decision which, as prescribed by the Clean Air Act, rested in the hands of EPA and which had been supported by EPA's Administrator and expert advisory panel.[27] In doing so, the President backed more lenient requirements for a gas proven to have negative effects on human health and wildlife.

In this environmental case and in other arenas, abuse of executive privilege, beyond the legal questions it raises, has direct impacts on the American people's lives. It is therefore essential that the next President limit the scope of his use of executive privilege and, in agreement with case law, cooperate with Congress to protect the public's right to know and preserve its trust in government. It is important to add that Congress also has a role to play in recapturing a declining authority. Appropriations authority, impeachment, appointments and subpoenas are among the arsenal of legislative tools that the Congress may use to extract the requested information from a reluctant executive. As Louis Fisher, a constitutional law scholar at the Library of Congress, points out, battles over ownership and sharing of government information are often resolved politically and it is partly Congress's responsibility to step up to the task.[28]

The executive branch's reluctance to comply with Congressional oversight has taken other forms as well. While disagreements between the Government Accountability Office (GAO) and the White House are typically resolved through hard

bargaining and compromise, the unwillingness of the White House to cooperate with the GAO on the issues of secrecy around the Cheney Energy Task Force led the oversight body to file its first-ever lawsuit against the executive branch to obtain access to information. The Administration argued that the GAO, as a legislative branch agency that reports to Congress, has no standing to enforce its requests for information against the executive branch. This argument was upheld in the district court's ruling and the GAO, possibly influenced by the Republican congressional majority, has chosen not to appeal. Soon after this decision, Head of House Committee on Government Reform Congressman H. Waxman underscored that this development may have a crippling effect on the GAO's power to assist Congress in overseeing executive branch activities. "Core American values," he said, "of open government and accountable leaders have been sacrificed."[29]

Governance Recommendation #2

ACCOUNTABILITY AND RESPECT FOR THE RULE OF LAW

The President should not issue signing statements to disregard or decline to enforce a law or to interpret it in a manner inconsistent with the will of Congress. Presidential signing statements should not be substituted for a veto and the President should communicate concerns over the constitutionality of pending bills to Congress prior to passage. In addition, it is important to ensure that executive branch officials and agencies cooperate with Congress in its oversight duties, limit the exercise of discretionary power and abstain from asserting executive privilege to shield the administration from legitimate congressional oversight and requests for disclosure of information. Congress on the other hand should reaffirm its oversight responsibility and take necessary measures to exercise its duty even when faced with a reluctant executive branch.

Scientific Integrity and Non-Partisan Enforcement of the Law

In February 2007, the Union of Concerned Scientists (UCS) and the Government Accountability Project released a report documenting "widespread political interference in federal climate science." Almost half of the 1,600 climate scientists working in government agencies who were surveyed by UCS indicated having perceived or personally experienced pressure to eliminate the words "climate change," "global warming" or other terms from a variety of communications.[30] The report sheds light on interference with scientific findings to advance a political agenda. It is essential that the right of scientists to speak about their relevant field without political censorship be maintained and that political review and communication of findings not undermine scientific accuracy. Additional evidence of political interference with scientific findings was revealed when former Council on Environmental Quality (CEQ) Chief of Staff Philip Cooney and his staff testified before Congress that they had made hundreds of separate edits to the government's "strategic plan" for climate change research. These changes injected doubt in place of certainty minimized the dangers of climate change and diminished the human role in causing the planet to warm. Similar edits were made on two EPA reports on climate change.[31] The two examples below show that, along with the distortion of scientific findings, partisan enforcement of the law can weaken important environmental and health safeguards.

California's Greenhouse Gas Emissions Standards. The Clean Air Act allows states to enforce stricter air pollution standards than federal regulations provided that they receive a waiver from the Environmental Protection Agency (EPA). While many such waivers have been granted to California over the years, the state's most recent request to put in place stricter emission standards was denied in December 2007.[32] Until last year, the Administration's main argument was that carbon dioxide was not a pollutant covered by the Clean Air Act – a point which the Supreme Court rejected in April 2007.[33] Other arguments around effectiveness are highly contested and various sources indicate that they aim to favor administrative political preference over established law.[34] A former assistant EPA Administrator under Clinton, among others, reported that Bush appointees ignored and overruled recommendations of agency staff in this case. While EPA chief Stephen Johnson argued that California's request did not meet the legal standard set out in the Clean Air Act, his staff had concluded the opposite.[35] Following EPA's decision, California, joined by fifteen other states filed a lawsuit against the agency to claim its legal right to set its own environmental standards.[36] The EPA Administrator's policy discretion, while real, should be informed by its scientific and legal advisors and be based on established law and precedent.

Mercury Regulation at EPA. More recently, in a case relating to a new EPA mercury regulation, a federal appeals court rebuked EPA's attempt to create a loophole for the power generating industry to allow them to escape the strict mercury pollution standards of the Clean Air Act.[37] The court, in a scathing ruling characterized EPA's rationale as an attempt to "substitute [its] desires for the plain text …" of the law.[38]

Governance Recommendation #3

SCIENTIFIC INTEGRITY AND NON-PARTISAN ENFORCEMENT OF THE LAW

The President should guarantee the non-partisan enforcement of the law and the scientific integrity of federal agencies by appointing administrators that will respect the advice of technical and scientific experts, pursue the non-partisan prosecution of the law and interpret legal provisions in a non-partisan and even-handed manner. The President should protect the right of scientists and researchers to publicly review and comment on documents that use their research or work. Finally, the political review and communication of findings should not undermine the integrity and independence of scientific data and analysis.

Conclusion

Opaque decision-making and disregard for the separation of powers have resulted in poor decisions that have harmed the environment and public health, have undermined civil liberties and threatened national security. Before the next President pledges to uphold the Constitution, he should make clear that his oath includes the responsibility to ensure that the executive branch's conduct will be driven by the essential principles of transparency, inclusiveness and accountability in government.

The expansion of executive power at the expense of the other branches of government observed since World War II – and faster yet since 9/11 – seems difficult to curtail. While the duties and boundaries of executive branch authority are delineated in the Constitution and related statutes, the U.S. Presidency has retained a great deal of discretion in the exercise of power. Consequently, as Bruce Fein – a Deputy Attorney General in the Reagan Administration – puts it, the American system of government relies upon the leaders of each branch "to exercise some self-restraint." [39] While legislative and judicial accountability mechanisms balance the executive's discretion with difficulty, voters and the media should test each candidate's commitment to openness in decision-making, and their willingness to exercise power with "self restraint."

About the Author

Remi Moncel is a Research Analyst and Coordinator in WRI's Institutions and Governance Program, which aims to foster environmentally sound and socially equitable decision-making worldwide. He first joined WRI as an intern for the Green Power Market Development Group in 2006 where he conducted research on renewable energy markets and regulation in the United States, Europe and Asia with a view to helping corporate group members pursue clean energy opportunities. He holds a joint BA/MA in political science from France's Sciences Po, Lyon.

Acknowledgments

The author gratefully acknowledges the help and guidance of Jake Werksman and Janet Ranganathan throughout the production of this brief. The author also thanks Louis Fisher, Christopher Kelley, Morgan Pitts and Rob Sargent for reviewing earlier drafts and Kirk Herbertson, Lydia Weiss, Christina Deconcini and Jonathan Talbot of WRI for their valuable comments and suggestions. Any errors or omissions are the sole responsibility of the author. For editing, design and other support, the author thanks Maggie Powell, Hyacinth Billings and Jennie Hommel.

Notes

1. Government in the Sunshine Act, 5 U.S.C. §552b (1976).
2. Federal Advisory Committee Act, (1972) as amended in 1997.
3. Openthegovernment.org. 2007. Secrecy Report Card: Indicators of Secrecy in the Federal Government.
4. President William Clinton. Address to Joint Session of Congress, 22 September 1993.
5. *Association of American Physicians and Surgeons, Inc. v. Hillary Rodham Clinton*, 997 F.2d 898 (D.C. Cir. 1993) and *Association of American Physicians and Surgeons, Inc. v. Hillary Rodham Clinton* 187 F.3d 655 (D.C. Cir. 1999).
6. Presidential memorandum. 29 January 2001.
7. *U.S. District Court for the District of Columbia: Judicial Watch v. Department of Energy, et al.*, Civil Action No. 01-0981 and Government Accountability Office. 2003. Energy task force: Process Used to Develop the National Energy Policy. http://www.gao.gov/new.items/d03894.pdf (accessed 03 October 2008).
8. GAO Comptroller General. Decision of the Comptroller General Concerning NEPDG Litigation. 30 January 2002.
9. Kinkopf, Neil. Signing Statements and the President's Authority to Refuse to Enforce the Law. 15 June 2006. Available at http://www.acslaw.org/node/2965 (accessed 03 October 2008).
10. Ibid.
11. *Clinton v. New York*, 524 U.S. 417 (1998) and American Bar Association Blue-Ribbon Task Force. 2006. Report, p.18.
12. *Freytag v. Commissioner* (1991). 501 U.S. 868

13. Savage, Charlie. 2006. Bush Challenges Hundreds of Laws, *Boston Globe*, 30 April.
14. Kelley, Christopher. Miami University of Ohio webpage. http://www.users.muohio.edu/kelleycs/ (accessed 03 October 2008).
15. Energy Policy Act 2005, Title VI, "Nuclear Matters," section 629, "Whistleblower Protection". This act amends section 211 of the Energy Reorganization Act of 1974.
16. Savage, Charlie. 2006. Examples of Presidents' Signing Statements, *Boston Globe*, 30 April.
17. American Bar Association Blue-Ribbon Task Force. 2006. Report
18. Kaiser, F. 2001. *Congressional Oversight*. Congressional Research Service report. The report identifies eight purposes and objectives for oversight: improve the efficiency, economy, and effectiveness of governmental operations; evaluate programs and performance; detect and prevent poor administration, waste, abuse, arbitrary and capricious behavior, or illegal and unconstitutional conduct; protect civil liberties and constitutional rights; inform the general public and ensure that executive policies reflect the public interest; gather information to develop new legislative proposals or to amend existing statutes; ensure administrative compliance with legislative intent; and prevent executive encroachment on legislative authority and prerogatives.
19. Presidential claims of privilege are classified in four categories for records relating to military, diplomatic, or national security secrets (states secret privilege), communications of the president or his advisors (presidential communications privilege), legal advice or legal work (attorney work product privilege) and the deliberative processes of the president and his advisors (deliberative process privilege). For more information, see: Huq, A. Background on Executive Privilege. Brennan Center for Justice at New York University School of Law, 23 March 2007. (accessed 03 October 2008) http://www.brennancenter.org/content/resource/background_on_executive_privilege/
20. Rosenberg, M. *Presidential Claims of Executive Privilege: History, Law, Practice and Recent Developments*. Congressional Research Service report. 21 August 2008. www.fas.org/sgp/crs/secrecy/RL30319.pdf (accessed 03 October 2008).
21. *United States v. Nixon,* 418 U.S. 683 (1974)
22. *In Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F.2d 725 (D.C. Cir. 1974), the D.C. appellate court, upheld by the Supreme Court, indicated that appropriate showing of need by Congress refers to the legislature's need to retrieve the withheld documents for immediate oversight needs or for the performance of its legislative functions.
23. *Judicial Watch v. Department of Justice*, 365 F. 3d 1108 (D. C. Cir. 2004) and *In re Sealed Case* (Espy), 121 F.3d 729 (D.C. Cir. 1997), as discussed in *Presidential Claims of Executive Privilege: History, Law, Practice and Recent Developments*. Congressional Research Service report, 21 August 2008. www.fas.org/sgp/crs/secrecy/RL30319.pdf (accessed 03 October 2008). The Judicial Watch case pertained to pardons granted by President Clinton before he left office but the assertion of executive privilege to withhold the information from the courts was made by President Bush.
24. *United States v. AT&T*. 567 F.2d 121 (D.C. Cir. 1977) and *United States v. House of Representatives*. 556 F.Supp. 150 (D.D.C. 1983).
25. Rosenberg, M. *Presidential Claims of Executive Privilege: History, Law, Practice and Recent Developments*. Congressional Research Service report. 21 August 2008. www.fas.org/sgp/crs/secrecy/RL30319.pdf (accessed 03 October 2008)
26. Attorney General Michael Mukasey. Letter to the President. June 19 2008. http://oversight.house.gov/documents/20080620114653.pdf. (accessed 03 October 2008)
27. Representative Henry A. Waxman. Opening Statement of Business Meeting Regarding Contempt Resolution. Committee on Oversight and Government Reform. 20 June 2008. http://oversight.house.gov/documents/20080620121418.pdf (accessed 03 October 2008).
28. Fisher, L. *The Politics of Executive Privilege.* Durham, NC: Carolina Academic Press, 2004.
29. H.Waxman. Statement. "Cheney Task Force Records and GAO Authority". 12 February 2003.
30. Union of Concerned Scientists and the Government Accountability Project. *Atmosphere of Pressure: Political Interference in Federal Climate Research*. Cambridge: UCS, 2007
31. Draft Report on the Environment and Our Changing Planet, an annual report to Congress House of Representatives. For more information see Committee on Oversight and Governance Reform. "Committee Examines Political Interference with Climate Science". 19 March 2007. http://oversight.house.gov/story.asp?ID=1214 (accessed 03 October 2008)
32. Editorial. 2008. California Rules. *New York Times*, 6 January.
33. *State of Massachusetts v. Environmental Protection Agency*. No. 05–1120. (2007).
34. California has a long history of enforcing stricter emissions standards than required at the federal level. This right was formally recognized by Congress in its 1977 amendment to the Clean Air Act in which it stated its intent "to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare." Opponents of the waiver for California argue that this exemption to federal standards opens the door to a multitude of local regulations to which automobile manufacturers would have difficulty adapting. However, in order to avoid such a situation, the Clean Air Act allowed only California to enforce stricter standards, giving other states the option of enforcing either the federal standard or that of California. For more info see, Sussman, R. 2008. "Blocking State Leadership on Global Warming". Center for American Progress. http://www.americanprogress.org/issues/2008/03/epa_buck.html (accessed 06 October 2008).
35. Wilson, Janet. 2007. EPA Chief is Said to Have Ignored Staff. *Los Angeles Times,* 31 December.
36. Reichburg, Keith. 2008. 16 States Sue U.S. on Emissions: Mass. Joins over EPA Ruling. *Boston Globe,* 3 January.
37. *State of New Jersey v. EPA*. (U.S. court of Appeals of D.C, 2008)
38. Ibid.
39. Savage, Charlie. 2006. Bush Challenges Hundreds of Laws, *Boston Globe*.

About WRI

The World Resources Institute (WRI) is an environmental think tank that goes beyond research to find practical ways to protect the earth and improve people's lives.

Our mission is to move human society to live in ways that protect Earth's environment and its capacity to provide for the needs and aspirations of current and future generations. Because people are inspired by ideas, empowered by knowledge, and moved to change by greater understanding, WRI provides—and helps other institutions provide—objective information and practical proposals for policy and institutional change that will foster environmentally sound, socially equitable development.

WRI organizes its work around four key goals:

- People & Ecosystems: Reverse rapid degradation of ecosystems and assure their capacity to provide humans with needed goods and services.
- Governance: Empower people and support institutions to foster environmentally sound and socially equitable decision making.
- Climate Protection: Protect the global climate system from further harm due to emissions of greenhouse gases and help humanity and the natural world adapt to unavoidable climate change.
- Markets & Enterprise: Harness markets and enterprise to expand economic opportunity and protect the environment.

ISBN 978-1-56973-699-9