

Statement of  
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Before the  
Committee on Homeland Security  
U.S. House of Representatives

“An Overview of Department of Homeland Security  
Federal Advisory Committees”

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Mr. Chairman, Ranking Member King and Members of the Committee, thank you for the opportunity to testify before you today on this important issue. While agencies' use of federal advisory committees has proliferated, the public has not seen an increased benefit from the vast sums of money that such committees cost the federal government. Just as troubling, advisory committees are too often established to be mouthpieces for an agency's pre-determined agenda. Unfortunately, the advisory committees that the Department of Homeland Security ("DHS") has set up appear to be no exception.

My organization, Citizens for Responsibility and Ethics in Washington ("CREW"), has been tracking the activities of agencies like DHS, both in terms of their effectiveness and their compliance with the Federal Advisory Committee Act ("FACA"). My testimony today is based on CREW's observations, as well as our understanding of what the FACA requires and how, as a legal matter, agencies fall short of the statute's requirements. In addition, CREW believes there are legislative changes that this Committee could propose for how DHS oversees and manages the many advisory committees under its direction that would lead to greater transparency, efficiency, and usefulness of the committees.

When Congress passed the FACA in 1972, it had a two-fold purpose: to reduce wasteful expenditures by federal agencies on advisory committees and to make the committees more accountable to the public. In particular, Congress found that the government had not adequately reviewed the need for many of the then-existing advisory committees. To address this concern, Congress declared that "new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary." 5 U.S.C. App. § 2(b)(2). In addition, Congress declared that advisory committees "should be terminated when they are no longer carrying out the purposes for which they were established." 5 U.S.C. App. § 2(b)(3).

On the issue of accountability, Congress made clear its concern that special interest groups could hijack advisory committees and steer them to their own agendas, thereby exerting "undue influence" on legislative decisions.<sup>1</sup> To address this concern, Congress required that membership of advisory committees be "fairly balanced in terms of points of view represented and the functions to be performed by the advisory committee." 5 U.S.C. App. §§ 5(b)(2) and (c). This requirement was intended to ensure that advisory committees "not be influenced inappropriately by the appointing authority or any special interest."<sup>2</sup>

Despite these clear statutory directives, we find ourselves today with what has been

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<sup>1</sup> H.R. Rep. No. 92-1017, as reprinted in 1972 U.S.C.C.A.N. at 3496 ("One of the great dangers in this unregulated use of advisory committees is that special interest groups may use their membership on such bodies to promote their private concerns.").

<sup>2</sup> H.R. Rep. No. 92-1017, as reprinted in 1972 U.S.C.C.A.N. at 3496.

called a “shadow government” of at least 900 advisory committees<sup>3</sup> weighing in on a range of critically important issues, from terrorism to climate change and the disbursement of a six-billion dollar Reading First program, too often with little oversight or review by the agencies that created them. A report issued by the Center for Public Integrity highlights how many of these 900 committees, composed collectively of 67,000 members at a cost of almost \$400 million annually, have taken advantage of loopholes in the FACA to avoid the statute’s transparency requirements and how many are plagued by flagrant conflicts of interest.<sup>4</sup> In other words, despite the passage of the FACA, we are facing many of the same problems that led Congress to enact the FACA in the first place.

We understand that for Fiscal Year 2007, DHS plans to spend more than \$8 million a year on advisory committees. CREW applauds this Committee’s review of those committees, particularly in light of the revolving door syndrome to which DHS has been subject almost since its inception, which raises the potential for serious conflicts of interest. Last year *The New York Times* reported that dozens of former DHS officials are now trading in on their agency relationship and domestic security credentials acquired at DHS in their private-sector, high paying jobs as executives, consultants or lobbyists for companies that do billions of dollars a year of domestic security business.<sup>5</sup> For example, three months after leaving DHS, former Secretary Tom Ridge was appointed to the corporate board of Savi Technology, a company that DHS promoted under Secretary Ridge’s leadership. To the extent any of these former DHS officials are now advising DHS on security-related matters as members of an advisory committee, their participation undermines the objectivity of any committee recommendations. The Center for Public Integrity’s report expressly notes the dangers posed by advisory committees that are “packed with industry representatives.”<sup>6</sup> In our experience, advisory committees too often are set up as a rubber stamp for a pre-determined outcome. In that way they thwart, rather than serve, the FACA’s purpose of facilitating a process where independent, outside voices can be heard.

It is difficult for watchdog groups like CREW, however, to get a handle on precisely what advisory committees are doing and the extent to which they are complying with the FACA’s requirements. This is because if a committee chooses to flout those requirements and operate in secret, there is often no way for CREW to know until the agency takes an action based on the recommendations of an advisory committee. So, for example, CREW did not learn that

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<sup>3</sup> See GAO-04-328 Federal Advisory Committees, p. 14.

<sup>4</sup> Jim Morris and Alejandra Fernandez Morera, Network of 900 Advisory Panels Wields Unseen Power, Center for Public Integrity, March 27, 2007, available at <http://www.publicintegrity.org/shadow/report.apx?aid=821>.

<sup>5</sup> Eric Lipton, Former Antiterror Officials Find Industry Pays Better, *The New York Times*, June 18, 2006.

<sup>6</sup> Morris and Morera, Center for Public Integrity, Mar. 27, 2007.

an advisory committee set up by the Department of Education to make recommendations on how funds under the one-billion-dollar-a-year Reading First program should be disbursed until Education's Inspector General issued a report detailing the blatant conflicts of interest of the committee's members and the fact that they had operated entirely in secret. At that point CREW filed a lawsuit against the Department of Education and Education Secretary Margaret Spellings based on their failure to comply with the FACA in their administration of this advisory committee. While we have been successful in getting the agency to release many of the thousands of pages of documents that the committee relied upon, there is no way to undo the tainted funding process that led to states' funding being conditioned on the requirement that they purchase certain reading materials, particularly those produced by high-level campaign contributors of President Bush.

Because litigation is often a crude and ineffective method of ensuring an agency's adequate and timely compliance with the FACA, we support the idea of building more accountability for advisory committees within the agency itself. Toward that end, this Committee should consider legislation that would require DHS to have stringent conflict-of-interest controls in place when choosing membership on an advisory committee. Such legislation should also create a centralized office or position within DHS that oversees and coordinates all the activities of advisory committees that the agency creates. This office or position should also be charged with requiring any advisory committee under DHS to comply with all of the FACA's requirements, with particular focus on the public accountability provisions of the statute. These include the FACA's requirements that the committees be fairly balanced; that their meetings, records and reports be open to the public; and that the public receive advance notice of advisory committee meetings.<sup>7</sup> Although Section 8 of the FACA requires agency heads to establish administrative guidelines and management controls and to maintain general information on the nature and function of advisory committees within their jurisdiction, more specific mandates are necessary. We also urge the Committee to require DHS to establish metrics to periodically assess the usefulness and efficiency of each outstanding advisory committee.

Beyond DHS, we also support legislation that would close up loopholes in the FACA that agencies have exploited to avoid operating in the public light. Advisory committees have discovered, for example, that if they set up so-called "working groups" that report to them, all of the substantive work of the committee can be done in secret by these sub-groups, which the courts have found need not comply with the FACA. Plugging this frequently exploited loophole should be a top priority for any legislative changes to the FACA. In addition, we recommend adding strict conflict-of-interest screening requirements to ensure that advisory committees are truly fairly balanced and not composed of members who have a financial stake in the outcome of the committee's recommendations. We recognize that legislative changes to the FACA are beyond the jurisdiction of this Committee, but hope that the Committee's work here will spur others in Congress to consider broader legislative actions.

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<sup>7</sup> See 5 U.S.C. App. § 10.

Given the critical mission with which DHS is charged, it is imperative that agency decision-makers are provided with recommendations that are the product of a disinterested committee representing a broad range of viewpoints and expertise. At the same time, the American taxpayer should not have to bear the burden of funding unproductive committees that have long outlasted their usefulness but survive only out of administrative inertia. Improving the efficacy and efficiency of DHS's advisory committees will fulfill FACA's original twin goals.

I would be happy to answer any questions you have.