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In the approximately two month legislative session since the Easter Recess, partisan differences appear to be on the increase as the 110th Congress turns to the remaining months of its Second Session. On April 24, Senate Majority Leader Harry Reid (D-NV) filed the 100th Cloture Motion of the 110th Congress, well above the previous record of 82 Cloture Motions for the entire 104th Congress. Senator Reid explained that the record number of Cloture Motions was necessitated by the Republican's refusal to cooperate in agreeing to procedures to consider bills on the Senate Floor. Senate Republicans accused the Majority Leader of stifling open debate in the Senate by filing for Cloture too quickly.

The partisan bickering is at work in the House as well. On May 7, the House Republican Leadership sought to demonstrate their displeasure with the Democrats' conduct of legislative business by tying up the House Floor in procedural knots. They made ten consecutive Motions to Adjourn, six Motions to Reconsider, and produced a series of 61 Members seeking to change their votes on various matters. One example of the depth of partisan differences could be seen in the consideration and vote on H.Res.1113 recognizing that the "House of Representatives celebrates the role of mothers in the United States and supports the goals and ideals of Mother's Day." While the Resolution initially passed by a vote of 412-0, a Republican Member rose to introduce a Motion to Reconsider the Vote. In the end the House decided to remain on record celebrating America's mothers.

One thing Democrats and Republicans apparently agree on is the Conference Report on the Food, Conservation and Energy Act of 2008 (H.R.2419). This bill is a \$289 billion five-year extension of various farm programs including \$1.25 billion in commodity purchases for food banks and \$230 million in research grants for fruit and vegetable growers. President Bush vetoed the bill on the grounds that it was too costly, but the House voted to override the veto by a vote of 316-108 and the Senate voted to do so by a margin of 82-13. This was only the second time both chambers were able to reach the two-third margin necessary to override a veto by President Bush. The Congress may have to revote on the farm bill Conference Report when they return from the Memorial Day Recess because a House clerk mistakenly dropped one of the titles from the fifteen title bill that was sent to the President.

Large majorities in the Senate and House also defied the Administration and supported the Strategic Petroleum Reserve Fill Suspension and Consumer Protection Act of 2008 (H.R.6022) to freeze oil deposits into the Strategic Petroleum Reserve (SPR). On May 12 the Senate passed the bill by a vote of 97-1 and the House supported the measure on the same day by a margin of 385-25. While President Bush had opposed the bill, the lopsided support for the legislation indicated a veto would be overridden and on May 19 he signed it into law (P.L. 110-232). Prior to the enactment of the Act, about 70,000 barrels of oil per day were added to the SPR.

Both Chambers again confronted questions on the war in Iraq during the consideration of the Supplemental Appropriations Act of 2008 (H.R.2642). In the House, the Leadership decided to circumvent the Appropriations Committee and brought the Supplemental to the Floor as three separate amendments. One amendment containing \$161 billion in war funding for fiscal 2008 and 2009 was defeated by an unlikely

coalition of anti-war Democrats and Republicans protesting the handling of the Supplemental by the Democratic Leadership. Two amendments concerning war policy restrictions and domestic spending were adopted by the House. The Senate adopted a stripped down version of its Supplemental which would provide \$165 billion in war funding and an amendment to expand educational benefits for veterans. The final version of the Supplemental will be determined when the Congress returns from the Memorial Day Recess.

The House passed the American Housing Rescue and Foreclosure Protection Act (H.R.3221) on May 7 by a vote of 256-160. The bill would overhaul Fannie Mae and Freddie Mac, reform the Federal Housing Administration (FHA) and expand the FHA's loan program to help borrowers get out from under mortgages they cannot afford.

On May 22, the House passed the Duncan Hunter National Defense Authorization Act for FY2009 (H.R.5658) by a vote of 384-23. The bill would provide authority to the Defense and Energy Departments to spend \$601.4 billion on national security programs in the fiscal year beginning October 1. It also sets up another battle in the ongoing "earmark war." In February, President Bush issued an Executive Order to agencies to ignore earmarks that were only included in Committee Reports and not incorporated in a statute. H.R.5658 includes language stating that the Executive Order "shall not apply to this Act."

The House also passed the Renewable Energy and Job Creation Act of 2008 (H.R.6049) which would revive or extend about \$55.5 billion in tax breaks for individuals or businesses for one year, including tax incentives for renewable energy projects.

Agenda

As the Congress returns from the Memorial Day Recess the Senate will turn to the Climate Securities Act (S.2191) which would establish a greenhouse gas emissions monitoring and reporting system within the Environmental Protection Agency (EPA). The bill also directs the EPA to establish an Emission Allowance Account for each calendar year from 2012 to 2050, and sets a cap on greenhouse gas emissions from sources that account for the majority of those emissions. The Senate may also take up a Medicare reform bill, the tax extenders legislation, and the Housing Reform bill. The House will likely revisit the Supplemental Appropriation bill, a possible revote on the Farm bill Conference Report, and a vote on the FY2009 Budget Resolution Conference Report.

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CHANGES IN CUBA

The U.S. government reacted very cautiously to Fidel Castro's retirement as president of Cuba last February. Official Washington seemed to say that replacing one authoritarian Castro (Fidel) with another authoritarian Castro (Raul) would produce no change in Cuba. United States policy toward Cuba, which for almost five decades has featured a punishing embargo, should therefore continue.

The Helms-Burton Act, passed in 1996, codified in great detail Congress's vision of what an acceptable government in Cuba would look like, and ostensibly prevented changes in the U.S. embargo until that government began to materialize. As a practical matter, the replacement of Fidel Castro was to be a key catalyst for unleashing freedom in Cuba and corresponding change in U.S. policies.

Now comes that key event, the replacement of Fidel Castro, and the obvious question is, what happens next? Most Americans readily accept the assumption that Raul Castro will simply carry forward the policies of his brother. From that perspective, no change in Cuba means no change in U.S. policy toward Cuba.

There is a real question, however, is whether that assumption is accurate or not. After my most recent visit to Havana, it appears that Cuba may now be resuming its walk on a path toward free enterprise – and a freer political system – that more than a dozen post-Cold War communist governments have followed. These changes began for Cuba in the mid-1990's following the loss of billions of dollars annually in Soviet subsidies.

Like much of Eastern Europe, Cuba might have continued down this path. But the reforms of the 1990s were not expanded nor extended to other sectors. In fact, when Fidel Castro declared the post-Soviet "Special Period" to be officially over in 2004, he retracted some of the policy changes and reduced the number of self-employed Cubans. A concurrent increase in Venezuelan oil subsidies masked the effects of this policy reversal.

Raul Castro was a leading implementer of the liberalization policy. Since emerging as the new Cuban leader, he has signaled in different ways his intent to continue and expand those reforms. He has taken incremental steps to deregulate agriculture, tourism and other sectors. (Reforms thus far are summarized below.) Some

reforms build on the changes already in place, in some cases legalizing practices that had already taken root. Other reforms stake out new territory.

Of potentially greater interest is the new government's effort to engage the Cuban public on the kinds of additional reforms that are needed. While most Cubans manage to get by under the current system, they are under no illusion that pure socialism works, particularly in comparison to the economic progress made by other post-communist countries. They are quite ready to replace the 100% tax rates of socialism with a reformed economic system, and get on with the business of building a new Cuba.

In that context, Cuba's future is potentially enchanting, properly measured not against Latin America's developing countries, but against the first world economy of the United States. Cuba is about the same size as Ohio in area and population. It is rich in natural resources and has an educated workforce. Under the right circumstances, Havana would sparkle.

While average Cubans may sense this and are motivated by it, they are also concerned with change that does not work to their benefit. Stability and gradual change is more appealing to many Cubans today than the regime change U.S. policy has sought to promote. Cubans seem to want their government to change, but do not want to change their government.

They also recognize that change will not be easy. Raul Castro's appointment of hardliners to key positions likely reflects the perceived need to manage popular expectations, even as the new government encourages dialogue. Cubans will also have to learn entrepreneurial skills and how to compete in a global economy. But they are an educated and talented people, and will learn quickly if allowed the personal incentives to do so.

The U.S. response to the announced reforms has been limited – allowing Cuban Americans to send cell phones to family members in Cuba. It is not clear at this point whether or how effectively the U.S.-supplied phones will operate in Cuba. More broadly, significant change in U.S. policy is not likely during an election year. What happens next year depends not only on which candidate is elected, but whether the changes now taking place in Cuba are continued. If so, American policy eventually will have to respond, regardless of the name or health of Cuba's political leader.

According to a recent edition of CubaNews, "Cuba has introduced more reforms in the last five weeks than in the past five years." It quotes Cuban economist Marc Frank, who described the reforms as "just the beginning. Decentralization and more individual initiative will slowly spread from agriculture to the entire economy. It's inevitable."

The reforms so far include –

- o Permitting Cubans unrestricted access to buy cellphones and cellphone service;
- o Permitting Cubans to purchase personal computers, DVD players and other electronic equipment;
- o Increasing the right of Cuban farmers to plant and sell cash crops, and to own their farm implements;
- o An end to "tourist apartheid," allowing Cubans to stay at tourist hotels, rent cars and enjoy other tourist amenities; and
- o Permitting Cubans to choose the pharmacy at which they have their prescriptions filled.

Other reforms openly under discussion include –

- o Eliminating restrictions on Cubans' right to travel domestically and internationally;
- o Expanded free enterprise through licensing in other sectors; and
- o Monetary reforms to eliminate the dual currency system.

Not surprisingly, the changes in Cuba do not come out of the Helms-Burton playbook. But is up to Cuba to decide how and when it reforms itself. The key question may quickly become whether U.S. policy can keep up with those changes.

Mike Roberts is a partner in Venable LLP based in Washington. He has represented American businesses in connection with their interests in Cuba since 1991. Mr. Roberts can be reached at 202-344-4350, or at mgroberts@venable.com.

VENABLE IN THE NEWS

Tom Quinn, a partner in Venable's Legislative Practice Group, was included as one of Washington's top lobbyists in the newspaper, The Hill's annual list. Tom was also quoted extensively in an article from the May 28, 2008 issue of the *Phoenix* on Senator Ted Kennedy's health and the impact that could have on the proceedings of the Senate.

The Indiana Historical Society announced that former Senator Birch Bayh will be named as an Indiana Living Legend. He will be honored at the Indiana History Center at the annual Living Legend Gala on Friday, July 18, 2008. East year, the Society's honors extraordinary Hoosiers for their statewide and national accomplishments in a variety of areas and disciplines. Birch is a partner in Venable's Legislative Practice Group and served for 18 years as a United States Senator from Indiana.

NEW VENABLE PARTNER AND SENIOR LEGISLATIVE ADVISOR

John O'Neil has joined Venable's Legislative and Government Affairs Practice Group as a partner. Prior to coming to Venable, John served as Policy Director and Counsel in the Senate Republican Whip's Office under Senator Trent Lott (R-MS) and also as Tax Counsel on the staff of the Senate Finance Committee under Chairman Charles Grassley (R-IA). John is an authority on tax and health care, as well as pension and ERISA issues.

Tiffany Moore has joined Venable's Legislative and Government Affairs Practice Group as a Senior Legislative Advisor. Prior to joining Venable, Tiffany served as the Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison. In the two years she served in the USTR office, Tiffany witnessed the signing of free trade agreements with Peru, Colombia, Panama and South Korea. She also played a major role in helping to secure Congressional approval of free trade agreements with Oman and Peru.

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