HALFTIME IN THE 109TH

Second Session

The Second Session of the 109th Congress got underway in the Senate on January 18 with the House planning to return on January 31, when President Bush will deliver his State of the Union Address. One of the first items of business in the Senate will be the vote on the confirmation of Judge Samuel Alito for a seat as an Associate Justice on the Supreme Court. While there are few certainties until the votes are actually recorded, it appears that the Republican's control of 55 seats in the current Senate almost assures confirmation. A recent study by a Professor of Political Science at Stanford University, David Brody, noted that while approximately 65 percent of all Supreme Court nominees are confirmed, that percentage grows to 85 percent when the Presidency and the Senate are controlled by the same party. Early in the Second Session, the Senate also plans on voting on the less contentious nomination of Ben Bernanke to replace Alan Greenspan as Chairman of the Federal Reserve.

There are several legislative items left over from the First Session of the 109th Congress that must be resolved early in the Second Session. Both the Senate and the House adopted bills reauthorizing 16 expiring provisions of the Patriot Act (S.2167 and H.R. 3199). However, they could not reach a final agreement on the length of the extensions. In one of the last acts before adjournment of the First Session, the Congress extended the expiring provisions only to February 3, 2006, thus forcing a reconsideration of the issue early in the Session.

The House will also have to vote on the Conference Report to S.1932, the Deficit Reduction Omnibus Reconciliation Act of 2005, which would enact a budget plan designed to reduce spending by $39.7 billion over five years. The Senate approved the measure on December 21 but made three minor revisions which will require another House vote before final passage. Republican Leaders hailed the bill as the first budget measure in eight years to cut mandatory spending programs. The House and Senate will also have to appoint conferees to reconcile the two competing versions of tax cutting legislation, the Tax Relief Act (S.2020 and H.R. 4297), which each passed at the end of the First Session. These bills include a large number of extensions of tax breaks for businesses and individuals. Both the Senate (S.1783) and the House (H.R.2830) passed different versions of pension reform legislation, the Pension Security and Transparency Act, which will have to be reconciled in conference. Majority Leader Bill Frist (R-TN) has indicated that among the first legislative items to be taken up by the Senate in the Second Session will be the Asbestos Injury Resolution Act (S. 852) which would replace the traditional tort based system for handling asbestos related litigation with an administrative "no fault" system.
Both the Senate and House are also expected to consider some kind of lobbying reform legislation early in the Session. On January 17, Speaker Dennis Hastert (R-IL) released his proposals for lobbying reform and the Senate and House Minority Leaders announced their reform package the following day. Majority Leader Frist has also asked Senator Rick Santorum (R-PA) to put together a Senate Republican lobbying reform proposal. These competing plans include measures such as a ban on privately funded travel for Members, increased limitations on gifts, more stringent disclosure requirements for lobbyists and additional limitations on how much time must elapse after former Members and high level staff have left their legislative positions before they can lobby Congress.

First Session

In the First Session of the 109th Congress, the Senate convened on 159 days with Senators casting 366 roll call votes, while Members of the House voted on the record 671 times over 140 days. One hundred and forty-seven bills were enacted into law. Among the more significant ones were the following:

**Class Action Fairness Act** (P.L. 109-2) which reformed the procedures for adjudicating large interstate class action causes of action. It grants Federal Courts jurisdiction in class actions where the amount in dispute exceeds $5 million and a large portion of the plaintiff class live in different states.

**Bankruptcy Abuse Prevention and Consumer Protection Act** (P.L. 109-8) which reformed bankruptcy proceedings and made it more difficult for individuals to eliminate the payment of all debts by declaring bankruptcy. The new law also requires that potential filers engage in credit counseling before they seek bankruptcy protection.

**Energy Policy Act** (P.L. 109-58) which enacted comprehensive reform of the Nation's energy policy addressing issues such as energy efficiency, coal, oil and gas production, nuclear power, electricity, vehicle efficiency, as well as energy research and development.

**Safe, Accountable Flexible and Efficient Transportation Equity Act** (P.L. 109-59) which authorizes approximately $286.5 billion in spending over six years for numerous surface transportation projects such as highways, bridges and mass transit.

**Protection of Lawful Commerce In Arms Act** (P.L. 109-92) which prohibits civil liability causes of action against manufacturers, distributors or dealers of firearms or ammunition for damages resulting from the misuse of their product.

**Dominican Republic-Central America-United States Free Trade Agreement** (P.L. 109-53) which allows for the implementation of agreements eliminating trade barriers between the United States and the countries of Guatemala, El Salvador, Honduras, Costa Rica, Nicaragua and the Dominican Republic.

**Terrorism Risk Insurance Extension Act** (P.L. 109-144) which extends the terrorism risk insurance program from 2005 to 2007. This program provides a Federal backstop for businesses that rely on having terrorism risk insurance in major real estate developments and other major projects that are vulnerable to potential terrorist attacks.
Outlook

It is likely that the Second Session of the 109th will be more contentious, and perhaps less productive, than the First Session. All 435 House seats and 33 Senate seats will be in contention in November. Republicans will be defending 15 Senate seats while Democrats and one Independent who votes with the Democratic Caucus will be defending 18 seats. As these elections draw nearer, the prospects for significant legislative accomplishments will diminish.

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Venable Advocacy of Historic U.S.-India Civil Nuclear Cooperation

In October 2005, Venable LLP was selected by the Government of India to assist in securing Congressional approval of a historic agreement between India and the United States to allow cooperation on civil nuclear energy. Part of a growing strategic partnership between the two democracies, the U.S.-India civil nuclear agreement has generated great excitement in both the American and Indian business community as a portent of a qualitative expansion of the U.S.-Indian commercial relationship and economic opportunities.

Under the leadership of former Senator Birch Bayh of our Legislative Practice, Venable has actively deployed in support of this worthwhile initiative, which promises great benefits to both countries. As an advocate for India, Venable is registered under the Foreign Agents Registration Act as an agent for the government of India.

Background

In a joint statement issued on July 18, 2005, President George W. Bush and Prime Minister Manmohan Singh committed the United States and India to a transformed partnership across the full range of global issues: promoting democracy, prosperity and peace; combating international terrorism; and expanded cooperation on economic growth and development, energy and the environment, high technology, space, and agriculture.

A key element of this historic U.S-India commitment is an agreement on civil nuclear energy cooperation. Under the agreement, the Administration will work with Congress to adjust U.S. laws and policies to remove restrictions on India’s access to civilian nuclear technology, equipment, and materials; similarly, the U.S. will work with America’s allies for full civil nuclear energy cooperation with India. India, in turn, will assume the same responsibilities and practices as other advanced democracies with a nuclear capability, including phased separation of India’s civil and military nuclear programs and enhancing India’s already strong controls on nuclear materials and safeguards against proliferation.

The U.S.-India civil nuclear agreement (“the Agreement”) advances U.S. strategic and commercial interests. While questions have been raised about the impact on the global nonproliferation regime established under the Nuclear Non-Proliferation Treaty (“NPT”), the U.S.-India agreement actually will reinforce efforts to curb the spread of nuclear weapons. This will help strengthen the international community’s ability to address U.S. concerns about the weapons programs of Iran and other countries.
U.S. Strategic Advantages to U.S.-India Civil Nuclear Cooperation

The U.S.-India civil nuclear cooperation agreement should not be seen in isolation but as an integral part of a transformation of the U.S.-India relationship that strongly serves U.S. strategic interests in furthering global stability, democracy, prosperity, and peace. Closer ties and full normalization of all aspects of the U.S.-India relationship are central to a successful American policy in South Asia, the Indian Ocean region, and globally:

- India is a rising global power. It will soon be among the world’s five largest economies. It will soon overtake China as the world’s most populous nation, with a huge, skilled, and increasingly educated (and English-speaking) workforce.
- India is a model for developing countries that should be encouraged: a vibrant, multi-ethnic, multi-religious, multi-lingual society – and the world’s largest democracy.
- India is a key U.S. ally in the war on global terrorism. The U.S.-India security partnership is reflected in an ongoing series of joint air and naval exercises.
- Just as America suffered its “9/11,” India’s “12/13” (the December 13, 2001, jihad terror attack on Parliament House in New Delhi) is one of many illustrations of the common threat that Americans and Indians face shoulder-to-shoulder. An October 2005 series of terror bombings in New Delhi killed 60 civilians and wounded more than 200; Lashkar-e-Tayyaba, a Pakistan-based Kashmiri terror group has been implicated.
- India currently relies on coal for 51% of its energy needs and imports over 70% of its oil and gas, much of it from Iran, and energy demand is growing rapidly with India’s burgeoning economy. By facilitating increased use of emissions-free nuclear energy, the Agreement will help limit the production of carbon dioxide and other greenhouse gases, as well as India’s dependence on foreign fossil fuels.

U.S. Commercial Advantages to U.S.-India Civil Nuclear Cooperation

America’s civil nuclear cooperation with India will facilitate the entry of U.S. firms into India’s lucrative and growing energy market, with consequent job creation:

- The Indian government and Indian companies have indicated a specific interest in buying nuclear and related components from American companies.
- America’s role as a leading supplier of India’s civilian energy needs will also boost access of other U.S. products and services into the world’s fastest-growing consumer market.

Strengthening Safeguards Against Nuclear Proliferation

India has never been a proliferator of nuclear weapons or weapons technology. But India’s anomalous status as a non-NPT nuclear power has kept India outside the global anti-proliferation regime. The Agreement will remedy that anomaly:

- While the Agreement does not mean India will become a party to the NPT, India will undertake obligations substantively the same as those binding on NPT states.
- Under the Agreement, India will: identify and separate civilian and nuclear facilities; place civilian facilities under International Atomic Energy Agency (IAEA) safeguards, and sign and adhere to an Additional Protocol; continue its nuclear testing moratorium; work towards an agreement with the U.S. on halting
production of fissile materials; safeguard transfer of enrichment and reprocessing technologies to other countries; secure nuclear and missile technologies according to global standards.

- India is stepping up its cooperation with America on proliferation concerns. At the September 2005 IAEA General Conference in Vienna, India cast a key vote together with the U.S. and its allies in support of a resolution to require Iran to subject its nuclear program to the scrutiny of the United Nations Security Council.

**The U.S.-India Agreement Is Not a “Precedent” for Any Other Country**

The U.S.-India civil nuclear cooperation agreement is not a precedent for Iran, Pakistan or any other country. U.S. legislation to implement the Agreement must reflect India’s unique status as the only stable democracy among non-NPT declared nuclear states (the other is Pakistan) or NPT states aspiring to nuclear status (Iran, North Korea):

- Unlike Iran, Pakistan, and North Korea, India developed its nuclear capability on its own, and never has been involved in proliferation as either a supplier or recipient.
- India does not support terrorism or harbor terrorist movements within its borders.
- India is a vibrant democracy whose military is firmly under elected, civilian control. India is not a corrupt, military-ruled or one-party state nor an intolerant theocracy.
- India-specific legislation to implement the Agreement will ensure that no other country will seek to claim falsely it “qualifies” for similar treatment.

**Conclusion**

Upon its successful approval by Congress, the U.S.-India civil nuclear agreement will rank as one of the most significant events of recent years, to the benefit of the United States, India, regional and global security, and the world economy. Venable LLP is pleased to be playing an active role.

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**Venable In The News**

On December 7, 2005 our partner, Asa Hutchinson, delivered the keynote address at the International Global Security Web Conference hosted by the Center for Defense and International Security Studies. His speech concerned current and future terrorist threats, cyberterrorism, infrastructure protection, and bioterrorism. Before joining Venable's Legislative Practice Group, Asa was Under Secretary for Border and Transportation Security at the Department of Homeland Security. Asa also served as the Administrator of the Drug Enforcement Administration and was elected to three terms in the U.S. House of Representatives from Arkansas.
On January 7, 2006 our partner, Birch Bayh, was a co-recipient of the NCAA President's Gerald R. Ford Award presented at the 2006 NCAA Convention in Indianapolis, Indiana. He shared the Award with John Wooden, the legendary UCLA basketball coach who won ten national championships. Birch was chosen for the Award because of his long-time support for intercollegiate athletics and particularly his authorship of the landmark 1972 Title IX legislation that required equal opportunity for men and women in all federally funded educational programs. Prior to joining Venable's Legislative Practice Group, Birch served for 18 years as United States Senator from Indiana.

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As part of our advocacy, we are distributing a periodic e-bulletin “News and Views About the United States and India: America’s Growing Partnership with the World’s Largest Democracy,” which is distributed without charge to a range of readers in the United States and abroad, in government (both Legislative and Executive branches), academia, think tanks, business, and media. Persons interested in being added to the distribution list should contact Jim Jatras at jgjatras@venable.com, or his assistant, Emily Gnadt at egnadt@venable.com.