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S. 1, THE SENATE APPROACH TO LOBBYING REFORM

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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S. 1, THE SENATE APPROACH TO LOBBYING REFORM

THURSDAY, MARCH 1, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:10 a.m., in Room 2141, Rayburn House Office Building, the Honorable Jerrold Nadler (Chairman of the Subcommittee) presiding.

Staff present: David Lachmann, Staff Director; Michelle Persaud, Counsel; Paul Taylor, Minority Counsel; and Susana Gutierrez, Clerk.

Mr. NADLER. Good morning, ladies and gentlemen. This hearing of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties will come to order.

I would like to begin by welcoming everyone to the first hearing of this Subcommittee in the 110th Congress. In particular, I want to extend a warm welcome to the Ranking Member of the Subcommittee, Mr. Franks.

I know that whatever disagreements we may have on particular matters of policy—and I am sure there will be some—we share a dedication to the important work of the Subcommittee.

I also want to welcome the very distinguished Members of this panel, and especially to our new Members.

We have an outstanding panel and I very much look forward to our working together.

I will begin by making an opening statement, before I turn for an opening statement to Mr. Franks.

Recent scandals—including criminal convictions, involving prominent lobbyists, Members of Congress, of the executive branch, and of their staffs—have heightened public awareness of the need to reform some of the ways in which Congress does its business.

In keeping with our pledge to reform this institution, the Democratic leadership put forward, and the House adopted, changes to the House Rules in the first 100 hours of this Congress.

Today, we begin consideration of proposed changes to the Lobby Disclosure Act. The Senate has already acted with the passage of S. 1. The House is now beginning its consideration of these issues.

In addition to the Senate bill, we also have a number of proposals put forward by Members of this Committee, by other Members of the House and by various activists. These proposals merit careful consideration.

It is my hope that this hearing will enlighten our efforts and that we will be able to work together on a bipartisan basis to advance a reform agenda.

Some of these issues are very difficult but we have an obligation to deal with them and to deal with them right.

The American people sent a clear message in November that they want their Government cleaned up. We would ignore that message at our peril. If the public loses confidence that the process of lawmaking is fair and open to all on an equal basis, then that can only undermine respect for the rule of law.

I would just add that the whole question of lobbyists is only one part of the problem. The core issue is the pervasive influence of money in politics. So long as we have a political system in which office seekers must raise large sums of money from people with a direct interest in legislation, the regulation of lobbying by itself will not fully solve this problem. A lobbyist without a PAC has a hard time corrupting the process. We must ensure that a private citizen without a PAC gets at least the same consideration as the powerful moneyed interests. That is the ultimate goal of our work.

So I want to welcome our witnesses today and thank them for their testimony and their assistance.

[The prepared statement of Mr. Nadler follows:]

PREPARED STATEMENT OF THE HONORABLE JERROLD NADLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

Recent scandals, including criminal convictions, involving prominent lobbyists, Members of Congress, of the executive branch, and their staff, have heightened public awareness of the need to reform the way Congress does its business.

In keeping with our pledge to reform this institution, the Democratic Leadership put forward, and we adopted, changes to the House Rules in the first 100 hours of this Congress.

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It is my hope that this hearing will enlighten our efforts, and that we will be able to work together, on a bi-partisan basis, to advance a reform agenda.

Some of these issues are very difficult, but we have an obligation to deal with them, and to do it right. The American people sent a clear message in November that they want their government cleaned up. We ignore that message at our peril.

If the public loses confidence that the process of lawmaking is fair and open to all on an equal basis, that can only undermine respect for the rule of law.

I would just add that lobbyists are only one part of the problem. The core issue is the pervasive influence of money in politics.

So long as we have a political system in which office seekers must raise large sums of money from people with a direct interest in legislation, the regulation of lobbying, by itself, will not fully solve the problem. A lobbyist without a PAC has a hard time corrupting the process.

We must ensure that a private citizen without a PAC gets at least the same consideration as the powerful, moneyed interests. That is the ultimate goal of our work.

So, I want to welcome our witnesses today, and thank them for their testimony and their assistance.

Mr. NADLER. I would now recognize our distinguished Ranking minority Member, the gentleman from Arizona, Mr. Franks, for his opening statement.

Mr. FRANKS. Well, thank you, Mr. Chairman, for those kind words. And they are reciprocated completely. I hope that all of us

on this Committee can remind ourselves that we are here for such a brief time and that we are here to promote human dignity and human freedom. And I consider it a privilege to be here.

Mr. Chairman, the introduction of this bill was preceded by high-profile ethics probes into actions by prominent officials, most notably in the Abramoff scandal.

The public, and many of us here, called for decisive action to clean up Beltway politics and to curb the misdeeds of unscrupulous officials and lobbyists. This should be the objective of this bill.

However, I am extremely disappointed to learn, through all three prepared statements of the Democrats' witnesses, that there is, indeed, a movement afoot to revive the blatantly unconstitutional grassroots lobbying provisions that were wisely stripped from the Senate version of this bill, because they had no connection with Washington's ethical scandals.

Grassroots lobbying was defined in the original bill as "the voluntary efforts of members of the general public to communicate their own views on an issue to Federal officials or to encourage other members of the general public to do the same."

Just reading those words describing what speech could be criminalized under such provisions should chill the spine of anyone who supports a strong first amendment.

Grassroots lobbying is the very lifeblood of a healthy democratic Government. Grassroots lobbyists are, perhaps, a preacher in Kansas, who encourages his congregation to voice their values, or a young activist blogger in Manhattan, who encourages her readers to take action to support the saving of the people in Darfur, or a non-profit in Scottsdale that encourages letter-writing campaigns to pressure for improved child health care, and I could go on.

What grassroots lobbying provisions would do to such people is the question. It would require them to register with the Government and report completely and thoroughly each qualified communication that was made in their efforts.

Failure to capture each piece of data required by the Government could result in 10 years in prison and hundreds of thousands of dollars in fines. That is 10 years in prison, hundreds of thousands of dollars in fines for free speech in America.

Mr. Chairman, the Supreme Court has made clear that such efforts to regulate political activity beyond direct contact with Members of Congress is in "serious constitutional doubt."

In *Rumley v. the United States,* the Supreme Court noted, "it is said that indirect lobbying by the pressure of public opinion on the Congress is an evil and a danger. That is not an evil. It is a good, the healthy essence of the democratic process."

Grassroots lobbying is largely responsible for the very formation of this country. Grassroots lobbying, through the publishing of the Federalist Papers, the famous essays written by James Madison and Alexander Hamilton, is largely responsible for the ratification of our Constitution.

And grassroots lobbying, Mr. Chairman, protected each and every guarantee of that Constitution's first amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to

assemble, and to petition the Government for a redress of grievances."

But for grassroots lobbying, there would be no American Revolution. There would be no abolition of slavery, no labor movement, no women's movement, no civil rights movement, because very few people would risk 10 years in prison and hundreds of thousands of dollars in fines for failing to perfectly capture every qualified instance of free speech made to spur their cause. How would Dr. Martin Luther King have fared under such a law?

Subjecting to Federal regulation the voluntary efforts of members of the general public to communicate their views cuts to the very core of freedom of speech that has made this country the most vibrant, creative and free Nation on Earth.

Grassroots lobbying regulation is unconstitutional, Mr. Chairman. It does nothing to even address the real ethical scandals in Government. And it has no place in this bill, now, or in the future.

And with these concerns in mind, I look forward to hearing from all the witnesses today.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Franks follows:]

PREPARED STATEMENT OF THE HONORABLE TRENT FRANKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA, AND RANKING MEMBER, SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

The introduction of this bill was preceded by high-profile ethics probes into actions by prominent government officials, most notably in the Abramoff scandal. The public, and many of us here, called for decisive action *to clean up Beltway politics* and to curb the misdeeds of unscrupulous officials and lobbyists. This should be the objective of the bill, and I am 100% behind this effort.

However, I am extremely disappointed to learn, through *all 3* prepared statements of the Democrats' witnesses, that there is indeed a movement afoot to revive the blatantly unconstitutional grassroots lobbying provisions that were wisely stripped from the Senate version of this bill because they had no connection with Washington's ethical problems.

Grassroots lobbying was defined in the original bill as (quote) "the voluntary efforts of members of the general public to communicate their own views on an issue to federal officials or to encourage other members of the general public to do the same." (unquote). Just reading the words describing what speech would be criminalized under such provisions should chill the spine of anyone who supports a strong First Amendment.

Grassroots lobbying is the VERY LIFEBLOOD of a healthy democratic government.

Grassroots lobbyists are, perhaps, a preacher in Kansas who encourages his congregation to voice their values; or a young activist blogger in Manhattan who encourages her readers to take action to support the saving of the people in Darfur; or a nonprofit in Scottsdale that encourages letter writing campaigns to pressure for improved child health care, and I could go on.

What would the grassroots lobbying provision do to such people? It would require them to register with the government and report completely and thoroughly each qualified communication that was made in their efforts. Failure to capture each piece of data required by the government could result in 10 years in prison and hundreds of thousands of dollars in fines! **That's 10 years in prison; Hundreds of thousands in fines. For exercising free speech in America.**

Mr. Chairman, the Supreme Court has made clear that such efforts to regulate political activity beyond direct contact with Members of Congress is in—quote—"serious constitutional doubt."[1] In *Rumely v. United States,* the Supreme Court noted:

> "It is said that indirect lobbying by the pressure of public opinion on the Congress is an evil and a danger. That is *not* an evil; it is a good, the healthy essence of the democratic process. . . ."

[1] *Rumely v. United States,* 345 U.S. 41, 47 (1953).

Grassroots lobbying is largely responsible for the very formation of this country. Grassroots lobbying through the publishing of *The Federalist Papers,* the famous essays written by James Madison and Alexander Hamilton, is largely responsible for the ratification of our Constitution. And grassroots lobbying is protected by each and every guarantee of that Constitution's First Amendment: (quote) "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

But for grassroots lobbying, there would be no American Revolution, No Abolition of Slavery, No Labor Movement, No Women's Movement, and No Civil Rights Movement, because very few people would risk 10 years in prison and hundreds of thousands of dollars in fines for failing to perfectly capture every qualified instance of free speech made to spur their cause. How would Dr. Martin Luther King have fared under such a law?

Subjecting to federal regulation the voluntary efforts of members of the general public to communicate their own views cuts to the core of the freedom of speech that has made this country the most vibrant, creative, and free nation on Earth.

Grassroots lobbying regulation is unconstitutional, Mr. Chairman. It does nothing to even address the real ethical scandals in government, and it has no place in this bill now or in the future.

With these concerns in mind, I look forward to hearing from all the witnesses today.

Mr. NADLER. Thank you.

We will now hear an opening statement from the distinguished Chair of the Committee, who has requested to make an opening statement.

Mr. CONYERS. Thank you, Chairman Nadler.

I needed to just say a couple of things, because, in my mind, my approach here connects the subject matter today with the confidence that the American people have to have in the integrity of the ballot, the integrity of the voting process, and the lobbying reform that we are undertaking.

And I commend you for doing this without the usual convenience of having a piece of legislation to discuss one way or the other. I think we have to take into consideration the unusual circumstances in which this hearing is taking place. I think it is something that must be done, because we have an obligation in the 110th to move forward on this.

There are only three points that, to me, I would like to hear from the witnesses on: stronger revolving-door provisions, enhanced disclosure, and stronger enforcement. And it has already been remarked by all of you, how long should Members be delayed before they can lobby their former colleagues? I think this is a valid question that we all should entertain collectively.

We need more disclosure from lobbyists about their clients and their contacts with Members of Congress. And so we need more sunlight on this part of the questions that we are examining.

We want questions of gifts and pay travel to be very carefully parsed, so that we know that we are not just building a wall which can be gone around easily. And I think we should increase the penalties for non-compliance or violation of the lobbying disclosure act requirements.

And so, with that said, I thank you for the opportunity to make an opening comment. And I look forward to this distinguished panel of witnesses.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, CHAIRMAN, COMMITTEE ON THE JUDICIARY, AND MEMBER, SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

First, I believe there is a strong need for lobbying reform legislation. A public opinion poll taken in 1964 found that 76% of the American people trusted their government to do what is right most or all of the time. More than forty years later, the landscape is decidedly different, with the vast majority of the public having a strong lack of faith in Washington's decisions. A January 2006 CBS News/New York Times poll found that *only 27%* of Americans said they trust the Federal Government to do what's right "most of the time" and *only 5%* said that they trusted the Federal Government to do what's right "just about always."

The public's skepticism is partially driven by recent scandals involving lobbyists and Members of Congress. We all know the details and there is no need to repeat them here. What is important about these scandals is that they have revealed systemic problems in the way the profession of lobbying is carried out and how lobbying activities are disclosed. We need to fix these problems.

I believe that there are *three* essential ingredients to an effective lobbying reform measure:

Stronger Revolving Door Provisions.

Current law only requires Members to wait one year after they leave the Congress before they can lobby their former colleagues. This has led to the unfortunate appearance that people simply run for Congress as a stepping stone to a lobbying career. There is also the unfortunate appearance that former friends and colleagues, advocating on behalf of well heeled special interests, are given greater access to elected officials than members of the public who argue for the public good. I believe we need greater restrictions on this "revolving door" from congress to lobbying and sometimes back and forth again.

Enhanced Disclosure.

We also need more disclosure from lobbyists about their clients and their contacts with members of Congress. It has been said that sunlight is the best disinfectant. We should require lobbyists to file more detailed reports disclosing their contacts with Congress as well as certifications by the lobbyist that they did not give a gift or pay for travel in violation of the rules. These reports should be filed electronically, more frequently—quarterly, rather than semi-annually—and they should be made available to the public for free over the internet.

Stronger Enforcement.

Most significantly, an effective measure should increase the civil and criminal penalties for violation of or noncompliance with the Lobbying Disclosure Act requirements. This act alone will prove to be a great deterrent not only for corrupt activity, and also will signal the general importance of timely and accurate disclosures.

I thank the panel for joining us and I believe that today's hearing will prove to be a positive step in the direction toward real and effective lobbying reform.

Mr. NADLER. Thank you, Mr. Chairman.

In the interest of proceeding to our witnesses, and mindful of our busy schedules, I would ask that other Members submit their statements for the record.

Mr. ISSA. Mr. Chairman, I have an opening statement.

Mr. NADLER. Without objection, all Members will have 5 days.

Do you object?

Mr. ISSA. Yes, I do.

Mr. NADLER. Very well. The objection is heard. Mr. Issa?

Mr. ISSA. Thank you.

And I understand the shortness of time, and I will be brief. But I certainly think in order to have both sides be heard in the opening process, we need to try to have both sides heard.

Mr. Chairman, I appreciate your holding this hearing. And I, too, would join with you in saying that there is a need for reform of many of the aspects of the existing campaign finance laws, not the

least of which is the continued abuse by 527s of the clear intent of prior legislation.

Additionally, though, I would like to bring note to the Chair's organizational letter on this hearing, in which, Mr. Chairman, you said the need for legislation—and the paragraph that concerns me the most for today is the one that says the need for further reform is highlighted by—during the 109th Congress, by scandals involving—and you go on to say Jack Abramoff. No problem there. You note Native American tribes.

Of course, my only problem here is I neither see these Government entities from being covered under the Senate legislation, nor were they covered by the House rules, even though that was asked for, that we not give a pass to Government entities, which is exactly what Jack Abramoff took advantage of. So it is very clear that that is not a genuine statement of reform, either under the Senate bill or under Speaker Pelosi's reforms.

But, additionally, I would like to take exception to the fact that all of the examples included only Republicans as scandalous. Additionally, not only did you not include Mr. William Jefferson's $90,000 of cash in his freezer, but you, in fact, included former Senator Conrad Burns, charged with nothing, and House Majority Leader Tom DeLay, whose only violation was a State law, which, to date, has not been adjudicated.

So I think that to disparage two Republicans, and then to name two additional Republicans, both of whom have gone to jail, and gone to jail for existing laws, points up exactly the fallacy of the hearing here today.

We are not talking about laws which are not in place, remedies that do not exist, just the opposite. What we are doing is showing examples of failure to act, when we already could have acted in the case of the Abramoff Government loophole. And, then, on a partisan-only basis naming Members of Congress—and former Members of Congress, I should say—two of whom would certainly not be covered by any or all of the proposed legislation. And the other two are in jail today for the crimes they committed.

So, Mr. Chairman, I would hope that, in the spirit of bipartisan behavior, we would get to dealing with 527s, we would respect the constitutional right of free speech, and that we would move the legislation in a direction which was bipartisan and not one that starts off so overtly partisan.

With that, I yield back.

Mr. NADLER. Thank you.

Without further objection, all other Members will have 5 legislative days to submit opening statements for inclusion in the record.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF THE HONORABLE STEVE COHEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE, AND MEMBER, SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

I look forward to hearing from the witnesses today regarding Senate Bill S.1, which enhances the transparency for interactions between Members of Congress and lobbyists. Too much of the important decision-making in Washington is influenced by the power and influence exerted by lobbying activity which takes places far from public view. Such a situation can easily lead to abuses of the public trust, as evidenced by the high-profile scandals from the previous Congress. I hope to learn

more not only about how S.1 increases transparency, but also about how we in the House of Representatives can further strengthen reform of the lobbying process.

[The prepared statement of Mr. Jordan follows:]

PREPARED STATEMENT OF THE HONORABLE JIM JORDAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chairman, I wish to express my approval of Sen. Robert Bennett's (R-UT) actions in introducing S.AMDT. 20—passed in the Senate on January 18—which removed the grassroots lobbying requirements from the bill that is before us today.

The Senate rejection of this grassroots lobbying provision is entirely appropriate. It would be counter to our purposes in increasing transparency and accountability in government to pass a provision that would greatly restrict the ability of our constituents to organize and petition us. Would we not have much less accountability if we silence the families and taxpayers that we serve?

Mr. Chairman, it is obvious that restricting grassroots organizing would run counter to the First Amendment of the United States Constitution, which we swore to uphold. We are clearly forbidden from making any law that would restrict each citizen's right to assemble and petition government. Grassroots organizations play a valuable role in keeping their members up-to-date on legislative activities in Congress. Because of them, citizens are able to stay better informed on the issues most important to them and better able to cut through the confusing jargon we often use here.

It is clear that placing grassroots groups under the same restrictions as professional lobbyists will greatly slow their activities at best and kill many of them off at worst. Many small grassroots organizations will have difficulty understanding and following the new requirements they would be expected to meet, and the risks of accidental failure to comply would intimidate them into shutting down their activities. Our nation and our constituents would then be the poorer for it. We would be slowing democratic discourse.

Mr. Chairman, I want to express my continued concern and wish that this grassroots lobbying provision NOT reappear in this House in any form. Democracy demands that we vigilantly preserve the rights of our constituents and we must keep the lines of communication with them wide open.

Mr. NADLER. Without objection, the Chair will be authorized to declare a recess of the hearings.

We will be joined today by our colleague, the gentleman from Massachusetts, Mr. Meehan. Our colleague has been a leader on this issue for many years. Without objection, the gentleman from Massachusetts——

Mr. FRANKS. Mr. Chairman?

Mr. NADLER. One second—will be permitted to sit with the Subcommittee to ask questions of the witnesses for 5 minutes.

Mr. FRANKS. Mr. Chairman, at the request of the Ranking Member Smith, I respectfully object to the participation of a non-Subcommittee Member.

House rules provide for participation in hearings only by the Members of that Committee or Subcommittee. House Rule 11 states each Committee shall apply the 5-minute rule during the questioning of witnesses in a hearing until such time as each Member of the Committee who so desires has had an opportunity to question each witness.

The Committee rules only explicitly allow the participation of non-Members of a Subcommittee in one instance, and that is for the Chair and Ranking Member to participate as *ex officio* Members of any Subcommittee.

Any exception to the rules must be granted under unanimous consent, and, as a general policy, we intend to object to the participation of non-Members.

Ranking Member Smith believes this should be an across-the-board policy at the Judiciary Committee.

Put simply, membership on a Subcommittee should mean something. Subcommittee membership allows Members the privilege of participation.

Also, setting a precedent that allows one non-Member of a Subcommittee to participate could lead to a situation where 10 other Members might also want to do so.

I want to stress that this objection has nothing to do with the Member in question or the subject matter at hand. Rather, we want to establish a general principle that being elected to a Subcommittee carries some real weight. Participation in a hearing should be the privilege of the Members of that Subcommittee.

Thank you, Mr. Chairman.

Mr. NADLER. I would remind my friend that under Mr. Chabot's chairmanship, when I was the Ranking minority Member for the last 6 years, this Subcommittee routinely extended the courtesy of allowing Members of the full Committee, and other Members, regardless of party, to participate in hearings of the Subcommittee.

It was always our aim, despite the sometimes strenuous disagreements we had on policy, to conduct the business of the Subcommittee with dignity and comity. It is my hope that we will be able to continue to function in that collegial spirit.

I would urge my friend to reconsider his objection and remind him that once people start objecting to routine courtesies, there is likely no end to it. I hope the Members will not drag the Subcommittee down that path.

We have been sent here by the voters to do their business. I am determined to follow that mandate. And I hope we can continue, as we have in the past, to extend routine courtesies to other Members of the full Committee.

Regardless, I remain committed to applying the rules in a fair and even-handed manner, but I would invite the gentleman to reconsider his objection, if he would.

Mr. FRANKS. Mr. Chairman, at such time as the Ranking Member and the Chair of this Committee can have colloquy among themselves, I have to maintain my objection.

Thank you, sir.

Mr. ISSA. Mr. Chairman, I would ask for a unanimous consent request.

Mr. NADLER. The gentleman will state his unanimous consent request.

Mr. ISSA. My unanimous consent is, in the alternative to that proposal, that we divide our time equally, alternating 5 minutes per side. If the majority would agree to a back and forth in perpetuity on a 5-minute-per-side, then we would be equally dividing the time, and it would be irrelevant who you chose to recognize on your side versus the Ranking Member on their side.

Mr. NADLER. I am not sure I understand what you are proposing.

Mr. ISSA. For each hearing in which unanimous consent was granted. Mr. Chairman, on the floor, we normally divide time equally 30 minutes per side, 10 minutes per side. This allows for each side to control——

Mr. NADLER. The rules provide that every Member or every person who sits here gets 5 minutes. Now, we have always followed the practice—and I don't know that anybody has ever kept count, and I certainly never have. I mean, sometimes it may happen to be, depending on attendance, more Republicans than Democrats or more Democrats than Republicans, and so be it. We have never said that, well, there are more Republicans here, so some Democrat will get 10 minutes. I mean, I don't think we want to go down that—every Member, 5 minutes, sir.

Mr. ISSA. Mr. Chairman, I offered the unanimous consent in order for the Chair of the full Committee and the Ranking Member to be able to work together in a collegial fashion to find an alternative that might be mutually accepted.

Mr. NADLER. I am not sure—I am going to have to object at this time.

Mr. ISSA. That is fine.

Mr. NADLER. Because I think we should continue to follow alternating 5 minutes, and we will let the full Committee Chair and the Ranking minority Member of the full Committee deal with this further.

For what purpose does the gentleman from Tennessee seek recognition?

Mr. COHEN. Mr. Chairman, if I could just make like a minute-and-a-half opener.

Mr. NADLER. Without objection.

Mr. COHEN. Thank you, Mr. Chairman.

I am the freshman here and the new person. And I don't know about Republicans and Democrats and who did wrong. There has been wrong done by Democrats and there has been wrong done by Republicans.

It was shown in the last election, though, that the people felt ethics was a major issue. And they didn't like a lot of the things they read about in Congress. And Congress went to its lowest point ever in the public's regard. It was like 30-something percent. And they voted the Democrats in in record numbers. So the public spoke.

But, regardless, if they were speaking about Democrats or Republicans, but they said they want better ethics laws. And we need to work together.

If Mr. Meehan has expertise—when I was chairman of State and local, and we dealt with ethics laws, we encouraged people like that to come forward and help us draw a better law for the public's interest.

I would hope we could have the best expertise, the best experience and institutional knowledge to be brought here for the public's issue.

This isn't a Republican-Democrat thing. This is to make Congress better, to uplift all of us.

And I am really amazed that somebody brings up Dr. Martin Luther King in terms of 527s when you are talking about speech. Dr. King changed this Nation by the force of his issue, by the people going to the streets, by what mankind should have done 100 years earlier to pass civil rights laws, after 100 years of Jim Crow. And to invoke Dr. King's name on money and politics is the opposite of

what Dr. King was about. He was about issues. He was about spirit. He was about soul. He wasn't about dollars. And I object to that as the congressperson from the district where he was unfortunately killed.

Thank you, Mr. Chairman.

Mr. NADLER. Thank you.

I would now like to introduce the distinguished members of our panel.

We have Ken Gross. Our first witness is a leading expert in the law of lobbying and campaign finance. Ken Gross is a partner at the firm of Skadden, Arps, where he heads the political law group. He advises many Fortune 500 companies relating to the regulation of political activities.

He appears frequently as a legal commentator on CNN, Fox and other networks. And his quotes appear regularly in the national newspapers. Formerly, he was associate attorney general at the Federal Election Commission, where he supervised the Office of the General Counsel Enforcement staff and oversaw the legal review of audits.

He serves on the ABA Committee on Election Law and co-chairs the Practicing Law Institute's seminar on "Corporate Political Activities." Also, he co-chairs the BNA publication on Corporate Political Activities.

We also have Sarah Dufendach, who is the chief of legislative affairs for Common Cause, an organization created by John Gardner in 1970 as one of the very first non-partisan, public-advocate, Government-watchdog groups.

I would like to join my colleagues in welcoming Sarah back to the Hill. She served in the United States House of Representatives as a top aide for former Congressman and former Whip David Bonior for over 25 years.

Sarah left the Hill to become the chief operating officer for the Vietnam Veterans of America Foundation, a $25 million NGO, providing health care for landmine victims in 24 countries over four continents. It received the Nobel Peace Prize for its work in the coalition, Campaign for a Landmine Free World. From there, she joined Common Cause.

We then have Professor Smith, who returned to the Capital University campus faculty in 2005, after 5 years here in Washington, where he served as commissioner, vice chairman and chairman of the Federal Election Commission. As chairman, Professor Smith oversaw the implementation of the McCain-Feingold campaign finance bill, and successfully fought to increase due process protections for defendants in FEC enforcement actions.

As with our other witnesses, he has previously testified before Congress, and his writings have appeared in numerous academic journals and popular publications. He is the author of "Unfree Speech: The Folly of Campaign Finance Reform." Professor Smith is founder and chairman of the Center for Competitive Politics.

And, finally, we have Thomas Mann, who is the W. Averell Harriman chair and senior fellow in Governance Studies at The Brookings Institution. Between 1987 and 1999, he was director of Governmental Studies at Brookings. Before that, he was executive director of the American Political Science Association.

He earned his B.A. in political science at the University of Florida and his M.A. and Ph.D. at the University of Michigan. He first came to Washington in 1969 as a congressional fellow in the offices of Senator Philip Hart and Representative James O'Hara.

Mr. Mann has taught at Princeton University, Johns Hopkins University, Georgetown, the University of Virginia and American University, and served as an expert witness in the constitutional defense of the McCain-Feingold campaign finance law.

Gentlemen and ladies, each of your written statements will be made part of the record in its entirety. I would ask that you now summarize your testimony in 5 minutes or less.

To help you stay within that time limit, there is a timing light at your table. I am sure you are aware of that. When 1 minute remains, the light will switch from green to yellow, and then red, when the 5 minutes are up. Thank you very much.

Mr. Gross?

TESTIMONY OF KENNETH GROSS, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Mr. GROSS. Good morning, Chairman Nadler, Ranking Member Franks and other Members of the Committee. Thank you for inviting me to testify.

I support S. 1. I think it is a good bill, in general, with certain reservations, which I will note.

It deals with a lot of provisions: gift provisions, lobby-disclosure provisions, revolving-door provisions, et cetera.

In terms of gifts, since the gift ban went into effect in the House on January 4th, it has actually, I think, worked fairly well.

I wouldn't mind if there was a small de minimis exception. I don't know if the horse has left the barn on that, but I have dealt with more questions about tuna-fish sandwiches served during plant tours and fact-finding trips and a member visiting with an editorial board for a newspaper that may happen to have a lobbyist in their organization.

And I think the executive branch 20-50 rule—20 per occasion and 50 for the year—just takes away a lot of small silly questions, so you don't have to throw a $10 bill on the table for a tuna-fish sandwich while you are touring around a plant or some other presentation that doesn't quite meet the widely attended exception.

In terms of the lobby provisions, I support them. They have quarterly reporting, which is a good thing, more contracted periods for when the report has to be made on the public record. It has the gift disclosure on it. It cross references the FEC political information as well.

I think that there are certain small provisions that should be blended, so the timing of the information on political contributions coincides with the FEC and that the threshold is over $200, not $200, which can create some problems with the way information is reported.

In fact, I think it could be strengthened with some additional breakdown on the lobby report between in-house lobbying, outside lobbying and trade-association dues related to lobbying. That is all required on the current report, but it is one aggregate number. And

I think if there was a breakdown of it, it would further compliance and be a more meaningful report.

There is a part of the disclosure on the S. 1 proposal that does cause me some concern, and that has to do with the bundling provisions.

What the law says is that if a lobbyist collects or arranges for contributions to be forwarded to a Member of Congress, a candidate, that that information has to be disclosed.

I am having a lot of difficulty understanding what that provision is saying. I think I know what it means to collect, if you are actually gathering contributions and forwarding them to a candidate or even distributing coded envelopes, which is what is the law at the FEC right now. That is how they define bundling. But I do not know what it means to arrange for a contribution. I do not know what it means to have an informal agreement to forward contributions, solicit contributions, direct contributions, when you are not actually necessarily handling the contribution.

If I serve on your national finance committee and I say I will raise $25,000 for you, and then I send an e-mail to everybody in the district who I think is likely to contribute to you, thousands of dollars are going to come in over the transom from those people, potentially, not because of my e-mail, but I could claim credit for it.

And we all know that when a contribution comes over the transom, it has got many claimants, you know, perhaps more claimants than Anna Nicole's baby has. And we are going to see multiple reporting of the same money coming over. I think there needs to be either an elimination of the arrangement provision.

The other part of it is I have to report, as a lobbyist, any contributions that the Member has actual knowledge that I have solicited or raised. How am I supposed to know what actual knowledge the Member or the candidate has of contributions have been raised? And, as has been noted, you know, there are serious penalties in these bills. And I think that has to be looked at again before it becomes part of a House bill.

In terms of the grassroots lobbying, I know that is a hot-button issue. All I have really said about that is that I think that you could draft a grassroots-lobbying law that deals with, you know, sort of hired lobbying efforts over very high thresholds, and it would survive a facial challenge under the law. I mean, the 1954 decision on Harris does say that artificially stimulated letter-writing campaigns can be subject to disclosure.

The only concern that I have in the area of grassroots is that it cannot interfere with associational rights of an organization, and it can set up a rubric for as-applied challenge. I think the grassroots provisions could be written to survive a facial challenge, but there probably would be a good bit of litigation over the application of it as to any particular group. And I have expressed some concerns about that, despite, I think, the ability of Congress to write a law that could survive an overall challenge.

Finally, the revolving-door——

Mr. NADLER. The 5 minutes has expired. Could you finish your statement?

Mr. GROSS. Sure.

I think that the provision in the revolving-door section that requires Members of Congress not to participate behind the scenes goes too far. I think the 2-year restriction on making appearances works. But it is an infringement to extend it to behind-the-scenes activity. That is not where the undue influence is exercised. It is exercised when you are making an appearance or you are using the name of a Member in trying to get in the door.

Thank you.

[The prepared statement of Mr. Gross follows:]

PREPARED STATEMENT OF KENNETH A. GROSS

(WITH THE ASSISTANCE OF MATTHEW BOBYS AND CHRISTINE KIRK)

Good morning Chairman Nadler, Ranking Member Franks, and Members of the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties. Thank you for the opportunity to appear before you today to discuss the merits of S. 1 and the Senate approach to lobbying reform.

My name is Kenneth Gross. I am a partner at Skadden, Arps, Slate, Meagher & Flom LLP, where I head the firm's political law practice. I specialize in compliance with campaign finance, lobbying, and ethics laws. Prior to Skadden, I was head of enforcement in the General Counsel's Office of the Federal Election Commission.

S. 1 is, overall, a constructive step toward positive reform of the federal lobbying law. By emphasizing increased disclosure, the bill succeeds in effecting practical change in the way lobbying activities are reported and monitored without infringing upon our First Amendment rights as citizens to petition our government for a redress of grievances.

With regard to gifts, the House has already adopted strong gift rule provisions. However, I continue to believe that there is room for a de minimis provision. It does not have to be $50, the previous threshold which some believe was abused and often exceeded, but a small exemption for meals of $20 or less per occasion would take care of many situations that may arise during, for example, a plant visit or other meetings at which a meal is served but where the requirements for a widely attended event are not met.

The bill undertakes to increase the transparency of lobbying by requiring more frequent disclosure with a shorter lag time (days between the end of a reporting period and the report's due date), and by requiring more substantive disclosure—for example, requiring lobby registrants and their lobbyists to disclose their federal political contributions and those made by their PACs; and requiring the reporting of certain gifts to Members and legislative staff made by lobby registrants, lobbyists, and their PACs. However, there should also be a breakdown of the aggregate amount currently disclosed on a corporate lobby report. The following should be separately itemized: (1) the value of in-house personnel, including overhead expenses for all employees (not just those who meet the 20% threshold); (2) outside lobbyist fees; (3) trade association dues related to lobbying; and (4) travel and entertainment expenses.

S. 1 takes great steps to increase the transparency of governmental decision-making by making electronic filing the standard and requiring reports to be searchable, sortable, and posted quickly for the benefit of the public.

Although the bill does not create an independent enforcement body, it does increase the penalties for violations of the lobbying law and the making of gifts and for the first time exposes donors of gifts to civil enforcement liability. I advocate a meaningful and measured enforcement of the law to ensure compliance with these reforms.

There are three different areas of reform that I would like to address today: bundling, grassroots lobbying, and the revolving door.

BUNDLING

S. 1 requires lobby registrants and their lobbyists to disclose the recipients of contributions of $200 or more per year that they "collected or arranged" and the aggregate amount of those contributions. "Collected funds" include those that a lobbyist forwards to a campaign. "Arranged funds" include (i) formal and informal agreements to "credit" contributions as being raised, solicited, or directed by a lobbyist or (ii) actual knowledge by the lobbyist that the candidate is aware that the lobbyist raised, solicited, or directed the contributions. A lobbyist must also disclose the ag-

gregate amount or a good faith estimate of the amount of campaign contributions raised at a fundraiser that he or she hosted or sponsored.

Regarding "collected funds," under current federal election law, an individual who bundles contributions must file a conduit report with the Federal Election Commission. It is impermissible for an individual acting as a representative of a corporation, for example as a Vice President for Government Affairs, to collect and forward contributions. However, an individual who has a significant position in a campaign and has been authorized by the campaign to raise funds, is permitted to collect and forward contributions without disclosing this activity. Thus, depending on the circumstance, bundling contributions may be illegal, require special disclosure, or require no disclosure.

What constitutes "arranging" contributions is even more difficult to define in application. It is typical that contributions received by a committee have more than one individual claiming credit for them; it is up to the committee to sort this out. This provision might have the effect of individuals claiming credit for contributions beyond those they are responsible for raising. For example, an individual could have an agreement with a campaign to raise a certain amount of money, and send out hundreds of e-mails soliciting contributions, and claim credit for all contributions made by the recipients of those e-mails, which would result in an inflated amount of contributions credited to the individual and campaign.

Additionally, much of the money raised for federal campaigns (in particular, for presidential campaigns) is not raised by lobbyists but by friends of a candidate or by senior corporate executives who do not meet the definition of "lobbyist." The bundling rules only apply to contributions collected or arranged by those defined as lobbyists. If Congress is interested in a more complete disclosure provision, it would have to apply to all individuals, not just lobbyists. Consequently, the bundling provision as written in S. 1 is vague and open to misapplication. It should be drafted so it is limited to contributions physically handled by a lobbyist or those forwarded to a campaign in coded envelopes, as is currently required under Federal Election Commission rules.

GRASSROOTS LOBBYING

As you know, the Senate deleted the grassroots lobbying provision from S. 1. The concerns over the now-deleted provisions have been generally overstated, but it would be wrong to require disclosure of communications among members or employees of an organization. If the required disclosure is limited to information regarding the cost of artificially stimulated letter-writing or electronic communications, sometimes called "astroturf lobbying," there are fewer constitutional concerns. In 1954, the Supreme Court specifically upheld the disclosure of artificially stimulated letter-writing campaigns, and I believe would do so again if legislation was narrowly drawn to address disclosure of astroturf lobbying with a specific call to action on legislation in the communication. However, an as-applied challenge may succeed if a particular group can demonstrate that disclosure would result in harassment or threats of reprisal against group members.

REVOLVING DOOR

Any restrictions on prohibiting Members or certain staff from lobbying after they leave Congress must be narrowly and clearly drawn. Existing restrictions on appearances by Members and senior staff meet that standard. S. 1 contains a provision not previously seen at the federal level. It prohibits appearances as lobbyists and behind-the-scenes lobbying activities of former Members for two years after leaving Congress. At the very least, the enforceability of such a provision may be difficult. At worst, it may constitute an improper infringement on an individual's right to engage in certain lobbying activities.

The proposed changes that we are discussing today only address part of the puzzle; the regulation of lobbying activity is a delicate process. Lobbying is a protected core First Amendment right. Effective disclosure is the only viable method of regulation, and this bill addresses shortcomings in the current law. It is my sincere hope that with the changes proposed in S. 1 and the other issues under discussion here, it will start the process of restoring public confidence in the legislative process.

Mr. NADLER. Thank you very much.

Ms. Dufendach?

TESTIMONY OF SARAH DUFENDACH, CHIEF OF LEGISLATIVE AFFAIRS, COMMON CAUSE

Ms. DUFENDACH. Good morning. My name is Sarah Dufendach. I am the chief of legislative affairs for Common Cause. I want to thank Chairman Nadler and Ranking Member Franks and the Subcommittee for holding this important hearing and for inviting Common Cause.

For 37 years, Common Cause has worked for an open, accountable and ethical Congress. These issues matter greatly to our 300,000 members across the country.

The Subcommittee has asked this panel to give our perspectives on S. 1, focusing on three particular issues and how we think the legislation could be made better.

Common Cause strongly supports the bundling provisions of S. 1. Bundling is becoming so prevalent that many presidential candidates are feeling the public pressure to disclose their own bundling. When lobbyists disclose only how much they personally give to a Member's campaign, it may vastly underestimate the true efforts that that lobbyist could be making in soliciting substantially more money for that Member. The absence of this information gives an unrealistic picture of the role that lobbyists are playing in election fundraising.

Common Cause also strongly supports the revolving-door provisions in S. 1. Changing the cooling-off period for Members of Congress from 1 year to one congressional session better reflects the realities of the legislative and election cycles.

Lobbying is much more than just contacting Members. So the definition should be expanded to reflect the full range of knowledge and skills which make hiring former Members so attractive to wealthy and powerful special interests.

The cooling-off period only affects staff making over $110,000. It is still just 1 year and only affects lobbying contacts, not activity. It does expand the staff lobbying prohibition from just their former Members and Committees to the entire body, to the whole House. But that better reflects the true reach that staff at that pay grade have.

Common Cause believes Astroturf lobbying activities should be disclosed. For those who think we don't need this type of disclosure, I have got three words: Harry and Louise.

According to media accounts, Health Insurance Association of America spent $17 million to pay for TV ads attacking the Clinton health-care plan. None of that multimillion-dollar campaign had to be publicly disclosed.

The public and elected officials need to know who is sponsoring major campaigns seeking to turn public opinion. Otherwise, we can't understand the motivation and the true objectives behind that effort.

S. 1 is, indeed, landmark ethics legislation. But most reform groups think it falls far short in one very important area, and that is enforcement of congressional ethics rules. Stricter rules mean little if they are not enforced. And the public has lost faith in the House to enforce its rules and discipline its own Members.

In fact, the public, by 80 percent, supports establishing a permanent, independent commission to investigate and enforce ethics rules for Members of Congress and their staff.

State legislatures in 23 States have adopted some form of independent ethics enforcement. The Kentucky legislative ethics commission was established 14 years ago. When surveyed, 97 percent of its legislators responded that an independent ethics commission does a better job overseeing compliance with State ethics rules than committees of legislators, such as the House or Senate Ethics Committees. They felt the biggest contribution it had made is its ability to depoliticize ethics enforcement.

Some critics say that independent ethics enforcement is unconstitutional. The Constitution gives the House and the Senate the power to punish its Members for disorderly behavior. But legal scholars widely believe that Congress has the power to delegate the receipt and investigation of complaints to an independent body, provided that each chamber retain its power to make the final decision about disciplining its Members.

My time is running out, and so I will just note that Representative Michael Castle and Representative Todd Platts have introduced a bill, H.R. 97, to establish an independent ethics commission in the House, which has been referred to this Subcommittee.

With that, I thank you for this opportunity to testify. And I look forward to your questions.

[The prepared statement of Ms. Dufendach follows:]

PREPARED STATEMENT OF SARAH DUFENDACH

Testimony of Sarah Dufendach
Chief of Legislative Affairs

Common Cause

Before the House Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Civil Liberties

Hearing on Lobby and Ethics Reform

March 1, 2007

Chairman Nadler, Ranking Minority Member Franks, and members of the Subcommittee, Common Cause welcomes this opportunity to testify on ethics and lobby reform. For 37 years, Common Cause has worked for an open, accountable and ethical Congress. This issue matters greatly to our 300,000 members and supporters.

It also matters greatly to the American public as a whole. Last fall, voters demonstrated that last year's Congressional scandals greatly disturbed them. One member of this chamber resigned in disgrace and was recently sentenced to 30 months in prison for making false statements and conspiracy to commit fraud, charges related to his acceptance of lavish trips and other favors from disgraced lobbyist Jack Abramoff. Another member pled guilty to accepting $2.4 million in bribes from a defense contractor, and is serving a prison term of eight years and four months. A third member made questionable advances to House pages, and left office under an ethical cloud.. Yet another member remains the subject of a federal investigation examining whether he accepted or solicited bribes from a foreign business interest for his efforts to gain them contracts with U.S. firms.[1]

There is no mistaking the cumulative impact of last year's headlines. The public made clear its distaste for what appeared to be a culture of corruption in Washington at the polls last November.

- Responding to an Oct. 6-8 USA Today/Gallup pre-election poll before the 2006 mid-term elections, likely voters ranked government corruption among their top three issues, along with Iraq and terrorism.[2]

- Exit polls bore out the same conclusions, with more than four in ten voters stating that official corruption was extremely important to their vote.[3]

By turning out so many incumbents, this "wave election" should have sent a clear signal to Congress: The public does not want "business as usual" at the Capitol. The voters want to be able to rely on the integrity and high ethical standards of their elected officials.

Speaker Pelosi is to be commended for her very strong response to the public by strengthening the ethics rules as the first order of business when the 110th Congress convened. The Speaker also promised to consider lobby reform legislation at a later date.
The Senate responded to the public's concerns with the passage of *The Legislative Transparency and Accountability Act of 2007*, S.1, on January 18. This legislation includes very strong provisions that will help restore the public's faith in Congress. Its strong bipartisan passage, approved by a vote of 96 to 2, represents an historic and ground-breaking first step to improve the ethical climate in Washington.[4]

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[1] Jonathan Allen, "Former Rep. Ney Sentenced to 30 Months," Congressional Quarterly Today, 19 Jan. 2007.
[2] Jeffrey M. Jones, "Democratic Edge on Issue Extends to Terrorism, Morality," Gallup Poll News Service, 13 Oct. 2006.
[3] Steve Inskeep, Renee Montagne, "Iraq Not The Only Issue to Sway Voters," *Morning Edition*, National Public Radio, 8 Nov. 2006.
[4] David D. Kirkpatrick, "Senate Passes Vast Ethics Overhaul," *The New York Times*, 19 Jan. 2007.

In addition to an overall review of the Senate's efforts, the Subcommittee has asked us to specifically address the bundling and revolving door provisions of S.1 and to comment on one provision the Senate rejected: the disclosure of what is termed "Astroturf" lobbying expenditures.

Common Cause strongly supports the Senate's provision on "bundling."

The bundling provision in S.1, put forward by Senators Russell Feingold (D-WI) and Barack Obama (D-IL) will require lobbyists and lobbying organizations to disclose the contributions they collect or arrange for federal officeholders and candidates, leadership PACs and party committees.

Currently, campaign finance disclosure laws ensure that the public knows how much an individual lobbyist gave in political contributions to federal candidates.

But merely to know how much an individual lobbyist gave to a Member's campaign vastly underestimates the efforts that lobbyist may have made to solicit funds on behalf of that Member.

Disclosure of the total amount of contributions that a lobbyist solicited on behalf of a Member is absolutely critical if the public is to have a full understanding of the role of lobbyists in election fundraising, and the extent to which their elected representatives depend on lobbyists to assist in the solicitation of donations crucial to their election campaigns.

S.1 also contains a strong revolving door provision.

This provision would extend the "cooling off period" during which Members of Congress must refrain from lobbying after leaving public service from one year to two years. The provision expands the definition of lobbying to include not only direct contacts with legislators and staff, but also those activities that facilitate lobbying contacts. Senior Congressional staff – those currently earning $111,000 or more -- must wait one year before making lobbying contacts with any Members or Congressional staff.

According to our colleagues at Public Citizen, about four out of ten Members of Congress move directly from their jobs in the public sector to become lobbyists, often making millions of dollars. Nearly one in 5 senior Congressional staffers, according to some estimates, make the same transition, and also earn far more generous salaries from their lobbyist employers.[5]

If we do not slow the revolving door, there could be an ever increasing presence and influence on public policy of the special interests with money enough to obtain the services of well-connected and savvy former Members and senior staffers. This makes for a very uneven lobbying playing field, and does not work to ensure that our elected representatives get all possible arguments on important legislative issues.

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[5] Craig Holman, "Time for Congress To Slow The Revolving Door," *Roll Call*, 12 Feb. 2007.

We also take the risk that Members or powerful staffers will negotiate job agreements with powerful special interests while they are still in Congress overseeing issues that affect the very parties they are negotiating with.

And we risk creating a culture where people ultimately seeking high-paid lobbying jobs look at public service as a stepping stone to their "real" careers.

While we respect the right of former Members and staff to leave office and pursue the careers of their choice, we believe that increasing the "cooling off" period from one to two years, and expanding the definition of lobbying to capture more of the real work that lobbyists, do are both good and necessary reforms.

Astroturf lobbying should be disclosed.

It is called Astroturf lobbying because it looks like authentic grass roots activity but in fact is the result, not of concerned citizens petitioning their government, but rather of lobbying firms paid to generate everything from paid media and phone banking to direct mail and other paid public communications campaigns aimed at influencing the public to contact their members of Congress on specific legislative proposals.

We regret that the Senate failed to pass a disclosure provision for Astroturf lobbying. For those who think we do not need this type of disclosure, we have three words, "Harry and Louise." Healthcare insurers, according to media accounts, spent $17 million to pay for TV ads attacking the Clinton healthcare plan.[6] Those ads were credited with playing a large role in killing the proposal. But not one penny of this multi-million dollar campaign had to be publicly disclosed.

The aim of Astroturf lobbying disclosure is not to impose reporting burdens on legitimate groups that do grassroots lobbying. We urge the House to propose and pass an Astroturf lobbying provision that would require disclosure by a lobbying firm or a firm that does not presently file federal lobbying reports but that earns at least $100,000 a quarter to engage in paid efforts to stimulate Astroturf lobbying. This provision would impose no additional disclosure requirements on an organization that lobbies. Only firms that do paid Astroturf lobbying would have to file lobbying reports that include the names of each client, the issues they work on for each client, and an estimate of the income they earned from that client for paid efforts to stimulate Astroturf lobbying. (The firm would not have to report income from a particular client that did not exceed $50,000 for the reporting period.)

The public and our elected officials have the right to know who is behind major ad campaigns stirring up public opinion on legislative issues, and how much money a client has invested in these campaigns.

When the public and Congress are not able to distinguish between genuine grassroots campaigns and Astroturf lobbying, citizen-generated efforts to communicate with their elected officials are devalued. That hurts genuine citizen advocates most of all and is a disservice to Members of

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[6] Peter Overby, "Senate Bill Ignores 'Astroturf' Lobbying," *Morning Edition*, National Public Radio, 25 Jan. 2007.

Congress genuinely trying to assess what most Americans and most importantly, their constituents, really think.

It is time for independent ethics enforcement.

While S.1 is indeed landmark ethics legislation, it falls far short in one very important area and that is enforcement of Congressional ethics rules. Stricter rules mean nothing if they are not enforced, and the record of the House Ethics Committee does not give us much faith that the Committee is up to enforcing new rules.

There has been a barrage of one scandal after the other at the highest levels of Congress and a stunning lack of response by the House Ethics Committee. There is a public perception that Ethics Committee members, including the Chairman, were punished for voting to reprimand a Congressional leader. The public no longer trusts the Congress to police itself.

In fact, the public overwhelmingly supports independent ethics enforcement. More than eight out of ten adults who were surveyed in a Washington-Post ABC News poll January 16-19, 2007, replied that they supported establishing a "permanent, independent commission to investigate and enforce ethics rules for members of Congress and their staffs."[7]

Congressional self-policing has inherent problems:

- Judging colleagues' ethical conduct is always difficult, but even more so in legislative bodies where members depend on good will from other members to get things done. As Harvard University professor Dennis Thompson has observed: "Members depend on one another to do their job. The obligations, loyalties and civilities that are necessary, even admirable, in a legislature, make it difficult to judge colleagues objectively or to act on the judgments even when objectively made." [8] It is a system, Thompson said, that contains an inherent conflict of interest. "[T]he members are not just judging other members, they are judging the institution. So more than in other professionals or other kinds of places, where self-regulation applies, their institutional norms are on trial …"

- The dual pressures of working with one another and avoiding partisan mutually assured destruction leads Congress either to agree to ethics "truces" when no Member files complaints against any other Member, or to wage an "ethics war" where both parties file charges indiscriminately to gain political advantage. Neither approach creates accountability or gains the public's trust.

Independent Ethics Enforcement is a proven, effective alternative to the current system.

Instead of struggling to judge their colleagues, Members of Congress should be guided by a professional, nonpartisan body tasked with receiving ethics complaints, doing preliminary investigations, and making recommendations to the Ethics Committees in their respective chambers about moving forward.

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[7] "Washington Post-ABC News Poll," washingtonpost.com., question 35, 20 Jan. 2007.
[8] Dennis Thompson, "Congressional Ethics System Creates A Conflict of Interest," *Roll Call*, 17 Jan. 2007.

State legislatures in 23 states have adopted some form of this model. In some states, it has worked exceptionally well.[9]

In Kentucky, for example, a Legislative Ethics Commission established 14 years ago now has the resounding support of legislators. When surveyed, 97 percent of state legislators responded that an independent ethics commission does a better job overseeing compliance with state ethics rules than committees of legislators such as the House or Senate Ethics Committees.[10]

Independent Ethics Enforcement is Constitutional.

The Constitution gives the House and Senate the power to punish their Members for disorderly behavior. But legal scholars believe that Congress has the power to delegate the receipt and investigation of complaints to an independent body, provided that each chamber retains its power to make the final decision about disciplining a member. Stanley Brand, a former general counsel to the House of Representatives, and ethics expert notes: "I have no doubt that Congress can constitutionally delegate to an outside body the initial steps of investigating and making recommendations for disciplinary cases. … Congress itself has to approve or ratify, or review those recommendations, because the Constitution says it's their job to do that. But … this is not an exclusive process."[11]

Independent Ethics Enforcement Benefits Both The Public and Legislators.

Two of the most effective state ethics committees are in Kentucky and Florida. Both were created as a result of a major legislative scandal. Both initially met with some reluctance and opposition by legislators. Both have been successful because of the high standards, nonpartisanship and professionalism of their respective staffs. The biggest contribution each has made, according to their current executive directors, is their ability to depoliticize ethics enforcement and to approach their role as helping legislators avoid ethical transgressions, rather than playing "gotcha" after ethical violations occur.

To be effective, an independent ethics enforcement entity must include the following qualities:

This list of essential elements for an Office of Public Integrity is supported by the Campaign Legal Center, Common Cause, Democracy 21, the League of Women Voters, Public Citizen and U.S. PIRG.

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[9] "Honest Enforcement: What Congress Can Learn from Independent State Ethics Commissions," U.S. PIRG Federation of State PIRGs, Feb. 2007.
[10] George C. Troutman and Romano L. Mazzoli, "Congress Should Look to Ky For Ethics Laws," *The Lexington Herald Leader*, 5 Feb. 2007.
[11] Stanley Brand, transcript, "Restoring Ethics in Washington: How Congress Can Create An Independent Ethics Commission," panel discussion, 23 Jan. 2006, pp. 31-32.

It is essential to establish a nonpartisan, professional enforcement entity with real authority to help enforce the House ethics rules. This reform is the lynchpin for all other ethics reforms. An Office of Public Integrity should be created with the following essential elements:

- The Office of Public Integrity should have the authority to receive and investigate outside complaints and to initiate and conduct investigations on its own authority, where the Office determines that a matter requires investigation.

The Office should have the powers necessary to conduct investigations, including the authority to administer oaths, and to issue and enforce subpoenas. The subject of any investigation should have the opportunity to present information to the Office to show that no violation has occurred. The Office should have the authority to dismiss frivolous complaints expeditiously and to impose sanctions for filing such complaints.

- The Office of Public Integrity should be headed by a Director or by a three-member panel, should have a professional, impartial staff and should have the resources necessary to carry out the Office's responsibilities.

If the Office is headed by a Director, the Director should be chosen jointly by the Speaker and Minority Leader. If the Office is headed by a panel, the panel should consist of three members, with one member chosen by the Speaker, one member chosen by the Minority Leader and the third member chosen by the other two members.

- The Office's Director or panel members should be individuals of distinction with experience as judges, ethics officials or in law enforcement, should not be Members or former Members, should have term appointments and should be subject to removal only for cause by joint agreement of the Speaker and Minority Leader.

- The Office should have the authority to present a case to the House Ethics Committee for its decision, based on the same standard that is currently used to determine when a case should be presented to the Committee. The Ethics Committee would be responsible for determining if ethics rules have been violated and what, if any, sanctions should be imposed or recommended to the House. A public report should be issued on the disposition of a case by the Ethics Committee. The Office should have the authority to recommend sanctions to the Committee, if the Committee determines an ethics violation had occurred.

- The Office should receive, monitor and oversee financial disclosure, travel and other reports filed by Members and staff, to ensure that reports are properly filed and to make the reports public in a timely and easily accessible manner. The Office should have the same authority for lobbying reports filed under the Lobbying Disclosure Act.

Thank you for giving Common Cause this opportunity to testify. We look forward to working with you on strong ethics and lobbying legislation and strong ethics enforcement in the weeks to come.

MEMORANDUM

DATE: February 3, 2006

TO: Common Cause

FROM: Stanley M. Brand, Esq.[1]
Brand Law Group

RE: Power of the House and Senate to Create Independent Ethics Commission

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You have asked whether the power conferred upon the House (and Senate) to punish its Members for disorderly behavior, U.S. Const., Art. I, § 5, cl.2, prevents the House from delegating certain responsibilities to an independent body outside the House to investigate ethical conduct of Members and make recommendations regarding punishment for breaches thereof to the full House for disposition. While there is no judicial authority directly deciding this question, in my view there is no textual constitutional impediment to doing so and analysis of jurisprudence interpreting collateral matters lends support to the conclusion that the House may enlist the aid of an outside independent body when exercising its powers under Art. I, § 5, cl. 2.

The provision at issue provides, in pertinent part, that "[e]ach House may…punish its Members for disorderly behavior, and, with the concurrence of two thirds, expel a Member." The first point to note is that the power is phrased in discretionary ("may") not mandatory terms. This contrasts with the other provisions respecting internal matters placed within the power of the House, such as the power to judge the elections, returns and qualifications of its Members, U.S. Const., § 5, cl.1, or the constitutional protection for speech or debate, *id.*, § 6, cl.1, or the disqualification clause of Art. I, § 6, cl.2, all of which specify that those powers "shall " be exercised. This is not a distinction without significance given the considerable judicial gloss which establishes that generally the use of the word "may" is a term of permission and the use of the word "shall" is a term limiting discretion. Black's Law Dictionary 883 (5th ed. 1979).

Beyond the textual analysis, there is a heavy presumption that the means Congress chooses to implement its constitutional powers are legitimate unless they directly impinge upon the express powers of a coordinate branch, *Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977)(Congress' statutory disposition of presidential papers) or

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[1] Mr. Brand served as General Counsel to the House of Representatives from 1976 to 1984. He was counsel of record on behalf of Speaker O'Neill as *amicus curiae* and argued on his behalf in *United States v. Helstoski*, 442 U.S. 477 (1979) and *Helstoski v. Meanor*, 442 U.S. 500 (1979), cases involving the self-disciplinary powers of Congress. He was also counsel in *INS v. Chadha*, 462 U.S. 919 (1983).

implicate the rights of persons outside the legislative branch upon whom its enactments or actions impinge. *United States v. Watkins*, 354 U.S. 178, 216 (1957)("By making the Federal judiciary the affirmative agency for enforcing the authority that underlies the congressional power to punish for contempt, Congress necessarily brings into play the specific provisions of the Constitution relating to prosecution of offenses…").

The delegation of investigative powers respecting Members to an outside body impinges on neither of these interests; its compass is purely internal. The Supreme Court has concluded that the stringent constitutional requirements for law making -- bicameralism and presentment[2] -- do not apply to matters that are wholly internal to the Houses of Congress. *INS v. Chadha*, 462 U.S. 919, 955 n. 21 (1983)(noting that each House has power to act alone in determining certain internal matters).

The House's judgment as to the appropriate procedures for exercising its self-disciplinary power is not cabined by the requirements imposed on law-making, or on the contempt procedures established to enforce its subpoenas because it only affects Members of the House. And in this regard, the Courts have uniformly refused to interfere in or review the exercise of the self disciplinary power. *Williams v. Bush*, Memorandum Opinion (unpublished)(court will not enjoin Senate proceeding to expel Member based on a claim of threatened violation of his constitutional rights), Civ. Action No. 81-2839 (D.D.C. 1982).

There is one respect only in which the House's power to discipline its Members is limited by the Constitution, and that is the requirement to obtain a two-thirds supermajority to expel a Member. This power was construed by the Supreme Court in *Powell v. McCormack*, 395 U.S. 486 (1969). There the Court was faced with the claim that Representative Adam Clayton Powell has presented himself as duly elected from the 19th Congressional District of New York but was excluded by the House based on findings of impropriety despite the fact that he possessed the standing qualifications for office specified in the Constitution. Powell challenged his exclusion asserting that since the House determined he possessed the standing qualifications, it has no choice but to seat him and then if it determined he had breached House rules, to expel him by a two-thirds vote. The Court agreed and held that the House exceeded its power. It did so after canvassing the English and colonial antecedents to the qualifications clause and concluding that the Framers intended to give the greatest deference to the will of the people in electing their representatives and that permitting the legislature to, in affect, add to the standing qualifications by allowing the House to exclude a Member for any reason other than those specified in the Constitution would undermine the electorate's choice.

The analysis of the Court in *Powell* underscores the discretion which the House has to utilize any procedures it deems appropriate in disciplining its Members save in those instances where it seeks to expel – because when it imposes punishments short of expulsion,

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[2] **U.S. Const. art. I, § 7, cl.3 requires that all legislation be presented to the President for his approval, or veto and Art. I, §§ 1, 7 requires that the concurrence of a majority of both Houses of Congress.**

whether that be censure, reprimand or fine, it does not deprive the electorate of its free choice.

In interpreting the powers of the House in this area, the Courts are likely to accord substantial deference to its choice of the means to implement its Art. I, § 5, cl.1 self-disciplinary power particularly if that legislative judgment is supported by a finding that the self-disciplinary process is not functioning in an orderly and efficient manner. By now, it is apparent to most observers and even Members themselves that the ethics process is in dire need of repair. The Supreme Court itself has remarked on the problems inherent in exercise of the self-disciplinary power in stating that "Congress is ill-equipped to investigate, try, and punish its Members for a wide range of behavior that is loosely and incidentally related to the legislative process." *United States v. Brewster*, 408 U.S. 501, 518 (1972). The Court noted that the process of disciplining a Member in the Congress is not without "countervailing risks of abuse since it is not surrounded with the panoply of protective shields that are present in a criminal case." *Id.* And perhaps more relevant to the current ethical vacuum in the House, the Court noted that Congress "has shown little inclination to exert itself in this area." *Id.*, at 519. It is this last consideration that the Court could find persuasive in deferring to a mechanism chosen by the House to diminish the arbitrariness recognized by the Court in *Brewster*. Surely, a system designed to vest the initial judgment of whether and under what objective standards to review allegations of Member misconduct in an independent Commission would address many of the concerns articulated by the Court in *Brewster*.

Finally, it is difficult to conceive of grounds upon which the Court would void a delegation of investigative authority to an outside commission when the Congress has already vested broad jurisdiction in the Department of Justice over the investigation and prosecution of Members for a vast array of criminal offenses. *See e.g.*, 18 U.S.C. § 201 (Members of Congress within definition of public officials prosecutable under statute for bribery). The Supreme Court laid to rest any suggestion that Members of Congress were outside the reach of the criminal laws when it held that the immunity from arrest clause[3] (Members "shall in all cases, except Treason, Felony and Bread of the Peace be privileged from Arrest during their attendance at the Session of their respective Houses…") of the Constitution did not shield Members from prosecution for subornation of perjury. In *Williamson v. United States*, 207 U.S. 425 (1908), the Court rejected a claim made by a Member convicted of subornation of perjury in proceedings for the purchase of public lands that he could not be arrested, convicted or imprisoned for any crime other than treason, felony or breach of the peace.

In conclusion, nothing in the text of the Constitution or the jurisprudence interpreting the separation of powers embodied therein offers any basis for asserting that Congress lacks the power to structure its self-disciplinary as it sees fit, including the creation of an outside independent body to investigate ethical breaches and recommend appropriate discipline to the House.

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[3] **U.S. Const., art. I, § 6, cl.1.**

For immediate release
February 6, 2007

Contact: Gary Kalman
202-546-9707 (office)
215-439-7090 (cell)

States Can Teach Congress About Ethics, Study Finds

The states are far ahead of Congress in establishing independent ethics enforcement for legislators according to a study released today by the U.S. Public Interest Research Group (U.S. PIRG). The report, *Honest Enforcement: What Congress Can Learn From Independent State Ethics Commissions*, found that twenty-three states have created commissions, boards or offices that operate largely free of partisan interference to oversee the ethics rules that apply to elected officials.

Responding to widespread voter concern about corruption in Congress, the House and Senate passed strong new restrictions on gifts and travel paid for by lobbyists in the first weeks of the new Congress. "It's an encouraging first step, but the new rules will only be as effective as the will to enforce them," said Gary Kalman, Democracy Advocate with U.S. PIRG.

The report separated out states that allow legislators to review complaints and decide whether to investigate allegations against their colleagues. Those state bodies were not determined to be independent.

"Under these basic criteria, Congress would not even make the cut," noted Kalman. "In contrast to these states, Congress currently relies on self-policing. Conflict of interest rules are optional and ethics committee members can and have been removed because they dared to enforce the rules against a powerful colleague."

The report also reviewed oversight procedures in the private sector and found that public businesses and professional licensing boards incorporate many of the conflict of interest elements favored by independent ethics commissions. "Congress is almost alone in choosing to police itself," concluded Kalman.

In the report, states in which a citizen's panel is authorized to review complaints and proceed with investigations were determined to be independent. States were further divided into four categories by the level of independence. States were scored by how well they fared under the following criteria:

- whether outside panelists who oversee a professional director and a staff of impartial investigators;
- if there are clear and mandatory conflict of interest guidelines limiting service to those who are not covered by the ethics rules or closely involved in partisan activities;
- if panelists serve set terms and cannot be removed for any reason other than cause;
- if panelists have the power to receive complaints from the general public;
- if panelists have the ability to launch investigations without legislative or outside approval and recommend or enforce sanctions against those who have violated the rules;
- the degree to which there is appropriate disclosure of the panel's actions.

Speaker of the House Nancy Pelosi last week appointed a bipartisan task force to look into revising the ethics enforcement rules in Congress. U.S. PIRG encourages the special congressional task force on ethics enforcement to follow the lead of the states and adopt honest enforcement.

U.S. PIRG, the federation of state Public Interest Research Groups (PIRGs), takes on powerful interests on behalf of the American public, working to win concrete results for our health and our well-being.

Honest Enforcement:

What Congress Can Learn From Independent State Ethics Commissions

February 2007

Executive Summary

Some argue that last year's scandals, which led to the conviction of two congressmen and several top aides, are evidence that ethics enforcement in Congress works. The actual facts leading up to the convictions, however, are more an indictment of the current process than a testament to its success. A whistleblower who took his case to the media and the U.S. Department of Justice—not the House and Senate ethics committees—uncovered the dealings of lobbyist Jack Abramoff. Neither the House nor the Senate ethics committee has indicated publicly that they looked into the matter or considered if other members of Congress broke any Senate or House rules, regardless of whether outside laws were broken. Among the many concerns, the secrecy of the process provides no assurance to the American people that members take these scandals seriously.

Although Congress recently passed strong new rules to limit undue access by powerful interests, the federal ethics enforcement process is flawed in many ways. The House and Senate ethics oversight committees are comprised of colleagues who know and work with one another and who rely on one another's support for legislation or campaign contributions, creating both the appearance and practice of a conflict of interest. Committee members have no guaranteed terms and can and have been removed as recently as 2006 for taking actions in the course of their work of which their colleagues disapprove. Complaints in the House can only be filed by other colleagues, limiting the ability of outside and more impartial observers to make their concerns heard.

While not every state has experienced the level of corruption uncovered in Congress last year, state legislatures face similar challenges. How should legislative ethics rules be enforced? How can lawmakers identify and hold accountable colleagues who cross the line and reassure skeptical voters that they are honest brokers of public policy and taxpayer money?

We decided to examine if state governments have had any success in creating an important layer of independence between the investigators and those being investigated—the state legislators. We found that the states are far ahead of Congress in understanding the inherent conflict of interest of colleagues overseeing colleagues. In fact, as of January 2007, at least 23 states had established independent commissions, boards or offices to oversee enforcement of ethics rules for their state legislators.

State commissions vary in how they were created, who participates and how they operate, but those that are independent from the legislature have, for the most part, several features in common:

- The commissions include outside panelists who oversee a professional director and a staff of impartial investigators;
- The commissions have clear and mandatory conflict of interest guidelines limiting service to those who are not covered by the rules or closely involved in partisan activities;
- Commissioners serve set terms and cannot be removed for any reason other than cause (i.e. neglect of duty, gross misconduct or other specified actions);
- The commissions have the power to receive complaints from the general public; and
- The commissions may launch investigations without legislative or outside approval and recommend or

enforce sanctions against those who have violated the rules.

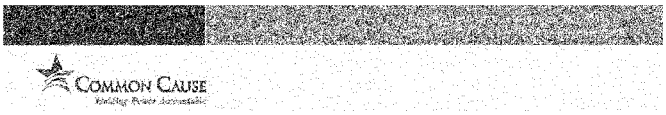
Some independent commissions also enjoy guaranteed funding outside of legislative appropriations and offer better disclosure of ethics complaints. In a few cases, to protect against partisan abuses, commissions will not release publicly or act on any complaint filed within 60 days of an election.

We can divide the states with independent ethics commissions or offices into roughly three categories. All of these states have taken steps to remove the inherent conflicts of interest when colleagues investigate colleagues. States in Categories 1 and 2 meet all of the independence criteria listed above including outside oversight, meaningful conflict of interest rules, protection against arbitrary removal of commissioners, an open complaint process, full investigative authority and full disclosure of complaints filed and actions taken. They are strong commissions with model design features that provide for significant independence. States in Category 1, however, also include features that provide additional checks on the system. The commissions in Category 3 states include most of the design elements necessary for independence from the legislature, but they fall short in one or more of the areas. For example, most of these commissions only disclose ethics complaints if the commission finds a violation.

Category 1	Category 2	Category 3
Connecticut	Alabama	California
Kentucky	Arkansas	Louisiana
	Florida	Maine
	Kansas	Massachusetts
	Missouri	Minnesota
	Montana	Nebraska
	Oklahoma	Nevada
	Oregon	North Carolina
	Rhode Island	Pennsylvania
	West Virginia	Tennessee
		Wisconsin

The states not listed either allow legislators to sit on their ethics commissions or do not have commissions that oversee ethics rules for state legislators. Other states have ethics commissions that only oversee compliance with campaign finance and lobby disclosure laws but not ethics rules or enjoy jurisdiction only over state executive branch officials, the judiciary or other non-legislative elected or appointed officials and their staff.

Congress is almost alone in choosing to self-police. If members are serious about honest and open government, they should follow the lead of almost half of the states and establish an independent ethics enforcement commission.



Establishment of Kentucky Legislative Ethics Commission—Membership

(1) The Kentucky Legislative Ethics Commission is established as an independent authority and shall be an agency of the legislative department of state government.

(2) The commission shall be composed of nine (9) members, not less than three (3) of whom shall be members of the largest minority party in the state. The members shall be appointed in the following manner: four (4) members shall be appointed by the President of the Senate, four (4) members shall be appointed by the Speaker of the House, and one (1) member shall be appointed by the Legislative Research Commission. No member of the General Assembly shall be eligible for appointment to the commission.

(3) The members of the commission shall be appointed within sixty (60) days of February 18, 1993. The Speaker of the House shall appoint one (1) member for an initial term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, and one (1) for a term of four (4) years; the President of the Senate shall appoint one (1) member for a term of two (2) years, one (1) member for an initial term of three (3) years, and two (2) members for a term of four (4) years. The Legislative Research Commission shall appoint one (1) member for an initial term of three (3) years. Thereafter all appointments shall be for a full four (4) years.

(4) Vacancies shall be filled by appointment by the original appointing authority in the same manner as the original appointments.

(5) Each member shall be a citizen of the United States and a resident of this Commonwealth. A member of the commission shall not be a public servant, other than in his capacity as a member of the commission or in his capacity as a special judge; a candidate for any public office; a legislative agent; an employer of a legislative agent; or a spouse or child of any of these individuals while serving as a member of the commission. In the two (2) years immediately preceding the date of his appointment, a member shall not have served as a fundraiser, as defined in KRS 121.170(2), for a candidate for Governor or the General Assembly.

(6) Except as provided in subsection (4) of this section, a member of the commission shall serve a term of four (4) years and may be reappointed.

(7) While serving on the commission, a member shall not:

(a) Serve as a fundraiser for a slate of candidates for Governor and Lieutenant Governor, or candidate for Attorney General, Auditor of Public Accounts, or the General Assembly;

(b) Contribute to a slate of candidates for Governor and Lieutenant Governor, or candidate for Attorney General, Auditor of Public Accounts, or the General Assembly;

(c) Serve as an officer in a political party; or

(d) Participate in the management or conduct of the political campaign of a candidate.

(8) A member shall be removed only by the Legislative Research Commission, and only for cause.

Chair and vice chair—Meetings—Compensation of members.

(1) The chair and the vice chair of the commission shall be elected by a majority vote of the members of the commission. The chair and the vice chair shall serve terms of one (1) year and may be reelected. The chair shall preside at meetings of the commission. The vice chair shall preside in the absence or disability of the chair.

(2) The commission shall meet within ninety (90) days of February 18, 1993. The time and place of the meeting shall be determined by the chair. Thereafter, the commission shall meet at such times deemed necessary at the call of the chair or a majority of its members. A quorum shall consist of five (5) or more members. An affirmative vote of five (5) or more members shall be necessary for commission action.

(3) A member of the commission shall receive one hundred dollars ($100) per day and reimbursement for actual and necessary expenses incurred in the performance of his official duties as a member of the commission for meeting days and for a maximum of two (2) nonmeeting days per month devoted to commission-related work.

Powers of commission—Authority to promulgate administrative regulations -- Lists of legislative agents—Trust and agency account.

(1) The commission shall have jurisdiction over the administration of this code and enforcement of the civil penalties prescribed by this code.

(2) The commission shall have jurisdiction over the disposition of complaints filed pursuant to KRS 6.686.

(3) The commission may administer oaths; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony; and have the deposition of witnesses taken in the manner prescribed by the Kentucky Rules of Civil Procedure for taking depositions in civil actions. If a person disobeys or refuses to comply with a subpoena, or if a witness refuses to testify to a matter regarding which he may be lawfully interrogated, the Franklin Circuit Court may, on application of the commission, compel the obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the Circuit Court or a refusal to testify in Circuit Court. Each witness subpoenaed under this section shall receive for his attendance the fees and mileage provided for witnesses in Circuit Court, which shall be audited and paid upon the presentation of proper vouchers sworn to by the witness.

(4) The commission may render advisory opinions in accordance with KRS 6.681.

(5) The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this code.

(6) The commission shall prescribe and provide forms for reports, statements, notices, and other documents required by this code.

(7) The commission shall determine whether the required statements and reports have been filed and, if filed, whether they conform with the requirements of this code. The commission shall promptly give notice to the filer to correct or explain any omission or deficiency.

(8) Unless otherwise provided in this code, the commission shall make each report and statement filed under this code available for public inspection and copying during regular office hours at the expense of any person requesting copies of them and at a charge not to exceed actual cost, not including the cost of staff required.

(9) The commission may preapprove leases or contracts pursuant to KRS 6.741.

(10) The commission shall compile and maintain a current index organized alphabetically by name of legislative agent and name of employer of all reports and statements filed with the commission in order to facilitate public access to the reports and statements.

(11) The commission shall preserve all filed statements and reports for at least two (2) years from the date of receipt.

(12) The commission shall provide to the Legislative Research Commission and each member of the General Assembly a list of every legislative agent and employer registered with the commission, including the name of each entity he represents and the date of his registration. The list shall be furnished on or before the tenth day of every month. Changes in the lists shall be furnished on Friday of each week that the General Assembly is convened in regular or extraordinary session.

(13) Upon the sine die adjournment of a regular session of the General Assembly, the commission shall provide to the Registry of Election Finance a list of each person who was registered as a legislative agent or employer at any point during the period in which the General Assembly was convened in regular session. Upon the convening, and within fifteen (15) days after the sine die adjournment of, any extraordinary session, the commission shall provide to the Registry of Election Finance a list of each person who was registered as a legislative agent or employer at any point during that period.

(14) In order to carry out the provisions of this code, the commission may contract with any public or private agency or educational institution or any individual for research studies, the gathering of information, the printing and publication of its reports, consulting, or for any other purpose necessary to discharge the duties of the commission.

(15) The commission may conduct research concerning governmental ethics and implement any public educational programs it considers necessary to give effect to this code.

(16) No later than December 1 of each year, the commission shall report to the Legislative Research Commission on the commission's activities in the preceding fiscal year. The report shall include, but not be limited to, a summary of commission determinations and advisory opinions. The report may contain recommendations on matters within the commission's jurisdiction.

(17) No later than July 1 of each odd-numbered year, beginning July 1, 1995, the commission shall submit a report to the Legislative Research Commission which shall contain recommendations for any statutory revisions it deems necessary.

(18) All funds received by the commission from any source shall be placed in a trust and agency account for use by the commission in the administration and enforcement of the provisions of this code. Funds in the trust and agency account shall not lapse.

Advisory opinions.

(1) The commission may render advisory opinions concerning matters under its jurisdiction, based upon real or hypothetical circumstances, when requested by:

(a) Any person covered by this code;

(b) Any person who is personally and directly involved in the matter; or

(c) The commission upon its own initiative.

(2) An advisory opinion shall be requested in writing and shall state relevant facts and ask specific questions. The request for the advisory opinion shall remain confidential unless confidentiality is waived, in writing, by the requestor.

(3) Advisory opinions shall be based on the Kentucky Revised Statutes as written and shall not be based on the personal opinions of commission members as to legislative intent or the spirit of the law.

(4) The commission shall promulgate administrative regulations to establish criteria under which it may issue confidential advisory opinions. All other advisory opinions shall be published except that before an advisory opinion is made public, it shall be modified so that the identity of any person associated with the opinion shall not be revealed.

(5) The confidentiality of an advisory opinion may be waived either:

(a) In writing by the person who requested the opinion; or

(b) By majority vote of the members of the commission, if a person makes or purports to make public the substance or any portion of an advisory opinion requested by or on behalf of the person. The commission may vote to make public the advisory opinion request and related materials.

(6) (a) A written advisory opinion issued by the commission shall be binding on the commission in any subsequent proceeding concerning the facts and circumstances of the particular case if no intervening facts or circumstances arise which would change the opinion of the commission if they had existed at the time the opinion was rendered. However, if any fact determined by the commission to be material was omitted or misstated in the request for an opinion, the commission shall not be bound by the opinion.

(b) A written advisory opinion shall be admissible in the defense of any criminal prosecution or civil proceeding for violations of this code for actions taken in reliance on that opinion.

Complaint procedure—Preliminary investigations—Penalty for false complaint of misconduct.

(1) (a) The commission shall have jurisdiction to investigate and proceed as to any violation of this code upon the filing of a complaint. The complaint shall be a written statement alleging a violation against one (1) or more named persons and stating the essential facts constituting the violation charged. The complaint shall be made under oath and signed by the complaining party before a person who is legally empowered to administer oaths. The commission shall have no jurisdiction in absence of a complaint. A member of the commission may file a complaint.

(b) Within ten (10) days of the filing of a complaint, the commission shall cause a copy of the complaint to be served by certified mail upon the person alleged to have committed the violation.

(c) Within twenty (20) days of service of the complaint the person alleged to have committed the violation may file an answer with the commission. The filing of an answer is wholly permissive, and no inferences shall be drawn from the failure to file an answer.

(d) Not later than ten (10) days after the commission receives the answer, or the time expires for the filing of an answer, the commission shall initiate a preliminary inquiry into any alleged violation of this code. If the commission determines that the complaint fails to state a claim of an ethics violation, the complaint shall be dismissed.

(e) Within thirty (30) days of the commencement of the inquiry, the commission shall give notice of the status of the complaint and a general statement of the applicable law to the person alleged to have committed a violation.

(2) All commission proceedings, including the complaint and answer and other records relating to a preliminary inquiry, shall be confidential until a final determination is made by the commission, except:

(a) The commission may turn over to the Attorney General, the United States Attorney, Commonwealth's attorney, or county attorney of the jurisdiction in which the offense allegedly occurred, evidence which may be used in criminal proceedings; and

(b) If the complainant or alleged violator publicly discloses the existence of a preliminary inquiry, the commission may publicly confirm the existence of the inquiry and, in its discretion, make public any documents which were issued to either party.

(3) The commission shall afford a person who is the subject of a preliminary inquiry an opportunity to appear in response to the allegations in the complaint. The person shall have the right to be represented by counsel, to appear and be heard under oath, and to offer evidence in response to the allegations in the complaint.

(4) If the commission determines by the answer or in the preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of this code, the commission shall immediately terminate the matter and notify in writing the complainant and the person alleged to have committed a violation. The commission may confidentially inform the alleged violator of potential violations and provide information to ensure future compliance with the law. If the alleged violator publicly discloses the existence of such action by the commission, the commission may confirm the existence of the action and, in its discretion, make public any documents that were issued to the alleged violator.

(5) If the commission, during the course of the preliminary inquiry, finds probable cause to believe that a violation of this code has occurred, the commission shall notify the alleged violator of the finding, and the commission may, upon majority vote:

(a) Due to mitigating circumstances such as lack of significant economic advantage or gain by the alleged violator, lack of significant economic loss to the state, or lack of significant impact on public confidence in government, confidentially reprimand, in writing, the alleged violator for potential violations of the law and provide a copy of the reprimand to the presiding officer of the house in which the alleged violator serves, or the alleged violator's employer, if the alleged violator is a legislative agent. The proceedings leading to a confidential reprimand and the reprimand itself shall remain confidential except that, if the alleged violator publicly discloses the existence of such an action, the commission may confirm the existence of the action and, in its discretion, make public any documents which were issued to the alleged violator; or

(b) Initiate an adjudicatory proceeding to determine whether there has been a violation.

(6) Any person who knowingly files with the commission a false complaint of misconduct on the part of any legislator or other person shall be guilty of a Class A misdemeanor.

Program of ethics education and training for legislators—Program of ethics education and training for legislative agents.

(1) The commission shall establish and supervise a program of ethics education and training including, but not limited to, preparing and publishing an ethics education manual, designing and supervising orientation courses for new legislators, and designing and supervising current issues seminars for legislators.

(2) The commission shall establish, supervise, and conduct a program of ethics education and training designed specifically for and made available to legislative agents.

The Lexington Herald Leader (Kentucky)

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Congress should look to Ky. for ethics laws

George C. Troutman And Romano L. Mazzoli

As the new Congress gets to work, there is much debate about ethics rules that will apply to U.S. senators and representatives. Many provisions under consideration are similar to legislative ethics laws that have been in place in Kentucky since 1993.

We encourage members of Congress to look to Kentucky for a model of a comprehensive ethics law and, more important, for an outstanding example of an independent ethics agency that works.

After 14 years of ethics oversight and enforcement, the Kentucky Legislative Ethics Commission received a resounding endorsement from state legislators.

In a recent survey, Kentucky legislators were asked: "Which do you think is more effective in overseeing legislative ethics rules: committees of legislators such as those in the U.S. Senate and House of Representatives or an independent commission such as Kentucky's?"

More than 97 percent of Kentucky's lawmakers said the independent commission is more effective than committees controlled by legislators.

Before the Kentucky General Assembly established the independent commission in 1993, our legislature had an in-house ethics process similar to the system in Congress, in which senators and representatives are asked to investigate allegations and resolve ethics questions involving other members.

When Kentucky legislators were debating the creation of the independent ethics commission, the most effective proponents of the idea were legislators who had served on the old ethics committee. These legislators understood how difficult it can be to sit in judgment of colleagues on ethics issues, then walk out of the meeting and ask those same colleagues for support on a bill or amendment.

Just as important, state legislators knew the public wanted ethics rules to be enforced by an independent, bipartisan group of citizens. In the years since, the General Assembly's wisdom in this matter has been proven conclusively.

Over the past 14 years, the Legislative Ethics Commission has been led by a strong group of public-spirited citizens, including retired legislators such as Sen. Georgia Powers and Sen. Doug Moseley, along with Rep. Pat Freibert and Rep. Lloyd Clapp. Retired jurists, including Court of Appeals Judges Charles Lester and Paul Gudgel, brought years of judicial experience to the commission.

These and many other retired public officials and civic-minded private citizens have consistently interpreted and enforced Kentucky's strong ethics laws with fairness and a notable absence of partisanship or politics.

Including retired elected officials along with private citizens assures a balance of views, with some members understanding the perspective of elected legislators, while the majority represents an outsider's perspective.

Kentucky legislators regularly seek guidance from the independent commission, asking the types of questions that members of Congress may be reluctant to bring to a committee that includes members from the other political party.

All lobbyists and their employers in Kentucky are required to register with the ethics commission and to regularly report on their activities in a format that the commission makes available to the public.

Lobbyists are prohibited from making or delivering campaign contributions to legislators and legislative candidates, and lobbyists and their employers may not give "anything of value" to a legislator or a member of the legislator's family.

The General Assembly deserves immense credit for enacting effective ethics laws and creating this strong, independent commission to monitor those laws, to make available a tremendous amount of information about ethics and lobbying and to assure the public that the laws are being followed.

Some members of Congress appear reluctant to embrace independent ethics oversight, but after working with the independent Legislative Ethics Commission since 1993, state legislators overwhelmingly believe the commission works better than in-house committees.

We hope Congress will take note of Kentucky's experience: Independent ethics oversight makes sense, members will support it and it works.

George C. Troutman of Louisville is chairman of the Legislative Ethics Commission. Former U.S. Rep. Romano L. Mazzoli of Louisville is a member of the commission.

Mr. NADLER. Thank you. And I congratulate you for coming in under the 5 minutes.

Professor Smith?

TESTIMONY OF BRADLEY SMITH, PROFESSOR OF LAW, CAPITAL UNIVERSITY LAW SCHOOL

Mr. SMITH. Thank you, Mr. Chairman, Ranking Member Franks and Members of the Committee. My name is Brad Smith. I am a professor at Capital Law School. I practice law with the firm of Vorys, Sater, Seymour and Pease.

And I am here today in my capacity as chairman of the Center for Competitive Politics, which works to educate the public on the benefits of free and open political participation.

The point I would leave for you, more than anything, is to, as you consider what approach to take, is to think about what exactly is the goal, what is the harm that you are trying to address, and how do the measures that you are considering address it.

For example, S. 1 requires quite a bit of lobbying reporting. Now, I don't have a particular problem with that. I think it helps the public understand what lobbyists are doing in terms of contact with their legislators to help them understand what Government is doing.

On the other hand, much of that reporting is simply duplicative of Federal Election Commission reporting. And much of that information that the Senate bill would require to be put into a database is already available through private databases, such as Political Money Line and Open Secrets and so on. And, as the law is drafted, it would seem to require a separate reporting date. So the people would have to report the same thing, but twice, to different folks on different timelines.

So I would just urge you to think about these things. Is it really necessary or is this just kind of show to make the public feel good, like something is going on? There is a need for something to be done substantively. But let's make sure we don't mess it up by just kind of throwing in the kitchen sink.

I have listed some various concerns in my prepared testimony. I share many of Mr. Gross's points about vagueness of some of the issues. I do think there are problems. And I think one reason there is some issue with the vagueness on some of these terms, which I have highlighted in my testimony, is that it is not entirely clear what is the harm you are trying to address. And so you end up with a provision that is fairly vague in trying to address it.

In terms of an ethics committee, you know, I don't have any strong opinion as to whether you ought to have a separate ethics group or not. If you want a little police force that goes around and checks up on you, that is kind of your business.

I do think that the public often has shown, and I think benefits, from being able to hold Members directly responsible for what they do, and I think they have shown that they can do that.

I note that the list that is included in Ms. Dufendach's testimony, what States have ethics committees, that the most toughest ones are Kentucky. No scandals there with Governor—no scandals in Connecticut, another one of the toughest ones where the governor has had to resign not long ago.

Whereas, among those States that don't have an independent ethics committee are such hotbeds of corruption as Iowa, Utah, Vermont, and a State called the best-governed State in the Nation by Governing Magazine, the State of Virginia. But, you know, you do what you want.

I do want to address the grassroots lobbying provisions here. They are not in this bill, but, obviously, there are people who want them to be in this bill.

Ms. Dufendach is a good advocate for her position, a skilled woman. I don't know her, but I am impressed by her background, and I note that she has spent her entire career in Washington.

And Mr. Mann I have known for several years, and he is also going to urge you to regulate grassroots lobbying. He is a talented political scientist, one of the most respected opinion leaders in Washington. If you were to go around and try to come up with somebody you would give the title of Mr. Washington to, it might be Tom Mann, right?

Now, I come from a little town in Ohio called Granville, Ohio. It has got 3,000 residents, and I will tell you that one thing people there don't care about at all and are not concerned about is that citizens are contacting Congress. That just doesn't worry these folks in the least, nor do they particularly care why they are contacting Congress.

When a citizen hears about something, about an issue, and it moves that citizen to want to take action, it doesn't matter where that comes from. And the corrupting link that is supposed to be there between lobbyist and the Government is broken, because a citizen—a real person, not a fake person, not an Astroturf person—a phrase, frankly, I find insulting—a real voter, one of your constituents, has to decide to take action and call you up. And that breaks that link between the lobbyist.

It doesn't matter whether the person hears this from a radio talk show. It doesn't matter whether they are misinformed from a New York Times editorial. The fact is a citizen has acted.

So pay attention to what it is that you are trying to get at. And I think if you do that, you will recognize that grassroots lobbying is actually a check on the type of insider lobbying that created the kind of scandals that brought some of you in the majority into power with people such as Jack Abramoff.

Thank you very much.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF BRADLEY A. SMITH

Mr. Chairman, Ranking Member Franks, and members of the Committee:

Thank you for inviting me here to testify today on the important issue of lobbying reform. By way of introduction, I am currently Professor of Law at Capital University in Columbus, Ohio; founder and Chairman of the Center for Competitive Politics, and Of Counsel in the Columbus and Washington offices of the law firm of Vorys, Sater, Seymour & Pease. From 2000 to 2005 I served as Commissioner on the Federal Election Commission, including a term as Chairman in 2004. In this latter capacity, I was privileged to travel and speak throughout the country with ordinary Americans concerned about corruption in government and the perceived remoteness of Washington to their everyday concerns. Although Vorys, Sater, Seymour and Pease represents many clients before the government, I am not a registered lobbyist and do not lobby myself. I address the Committee today on my own behalf and that of the Center for Competitive Politics, and do not speak for the law firm of Vorys, Sater, Seymour & Pease or Capital University.

The Center for Competitive Politics ("CCP") is a non-profit educational organization operating under Section 501(c)(3) of the tax code, with offices in Arlington, Virginia. Through studies, reports, conferences, and assistance in litigation, CCP seeks to educate the public and lawmakers on the operation and effects of money in the political and legislative systems. In light of the comments to follow, I also note that neither CCP nor Vorys Sater or Capital University engage in what is called "grassroots lobbying."

As the House considers lobbying reform, it is important to balance carefully targeted regulations that address real abuses, while minimizing the burden on the vast majority of lobbyists who are honest, dedicated individuals helping citizens to exercise their fundamental Constitutional Rights of Free Speech and the Right to Petition the Government for Redress of Grievances. These are among the most important rights guaranteed by our Constitution. Yet all too often in the past, we have allowed isolated incidents of improper behavior—scandal—to stampede us to hastily conceived, ill-considered measures that restrict these important Constitutional rights while doing little to address the abuses that allegedly justify the restrictions. All of us here know that lobbyists can provide a valuable function, providing members with useful, important information on public opinion, and also with the information needed to craft wise, beneficial, effective legislation. We know that abuses exist, but that they are the exception, not the rule.

We must also recognize that whatever steps Congress takes, there will be a substantial element of popular distrust of the government in general and Congress in particular. This is normal in every democracy—around the world, even at the peaks of confidence in government in the societies most trustful of government, there is typically one-quarter to one-third of the electorate that believes that government cannot be trusted to pursue the public good. This is normal and indeed it can be healthy—it is this skepticism that enables the public to serve as a watchdog against government corruption, and as a guardian of its own rights against government overreach. There is no legislation you can pass, no magic wand you can wave, that will make all Americans trust their government, and it would be a mistake to try. Thus, it is important to pass serious, balanced legislation, that addresses specific and real problems, rather than to engage in populist grandstanding or pass measures merely because they "send a message."

The problem, as I see it, based on my travels around the country and my conversations with lobbyists, officeholders, civic leaders, and ordinary citizens, is that lobbyists have access to information, and to legislators, that is not known to the general public. In a small number of isolated cases, lobbyists have used their access, outside of the public eye, to bribe or improperly influence members. More commonly, the simple lack of transparency, even absent any improprieties, has resulted in the public being closed out of decisions made by the government. I have never heard it expressed, however, that the problem is too much involvement by the American people, or that the people are contacting members of Congress, or that citizens and groups are attempting to provide information to the people at large. Thus, the Senate approach is quite right to focus on legislative transparency, and avoid the efforts by some to use lobbying reform to pursue other agendas that aim to limit, rather than enhance, popular checks on government.

In particular, the Senate was quite correct in removing from the bill, as it was originally introduced, Section 220, pertaining to the regulation and in particular the disclosure of grassroots lobbying. As a matter of constitutional law, the Supreme Court has repeatedly recognized a right to engage in anonymous political speech. These cases include Thomas v. Collins, 323 U.S. 516 (1945) (striking down a statute requiring labor organizers to register and disclose to the government prior to speaking); NAACP v. Alabama, 357 U.S. 449 (1958) (guaranteeing the NAACP the right to protect the identities of its members and financial supporters); Talley v. California, 362 U.S. 60 (1960) (protecting anonymous speech to the public); McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995) (upholding the right to anonymous speech on political issues during the course of a campaign); and Watchtower Bible & Tract Society v. Village of Stratton, 536 U.S. 150 (2002) (striking down a statute requiring prior registration with government). Only in the narrow circumstances of political advertisements directly related to a candidate election and either expressly advocating the election or defeat of a candidate or involving substantial expenditures for broadcast ads mentioning a candidate within 60 days of an election has the Court ever upheld restrictions on anonymous speech. See Buckley v. Valeo, 424 U.S. 1 (1976); McConnell v. Federal Election Commission, 540 U.S. 93 (2003). Regulation of grassroots lobbying through mandatory disclosure of funding sources directly violates the Constitution, as repeatedly interpreted by the Supreme Court.

Moreover, as a policy matter, regulation of grassroots lobbying makes little or no sense in addressing the problem of government corruption. Contact between ordi-

nary citizens and members of Congress, which is what "grassroots lobbying" seeks to bring about, is the antithesis of the "lobbying" at the heart of the recent congressional scandals. It is citizens expressing themselves to fellow citizens, and citizens to members of Congress. That they are engaged or "stimulated" to do so by "grassroots lobbying activities" is irrelevant. Regulation that would hamper efforts to inform and motivate citizens to contact Congress will increase the power of professional lobbyists inside the beltway. Regardless of what lobbying reform is passed, not even the most naïve believe it will mean the end of the professional, inside-the-beltway lobbyist. Thus, grassroots voices remain a critical counterforce to lobbying abuse.

Disclosure of the financing, planning, or timing of grassroots lobbying activities adds little, and will often be harmful, leading to exactly the type of favoritism and/or negative pressure that the public abhors. I want to stress that I have first hand experience with being on the receiving end of grassroots lobbying campaigns. As a Commissioner on the Federal Election Commission, I was the target of several such campaigns, one of which generated over 100,000 citizen communications. I found it helpful to hear from the public, even if in the form of mass generated campaigns. I know that these campaigns were easily detected and appropriately discounted (but not ignored or resented). No member of Congress even remotely in touch with his district will be unaware that a sudden volume of similar calls, letters, or emails coming from his or her district is possibly, if not probably, part of an orchestrated campaign to generate public support. But because the callers themselves are real, there is little to be gained by knowing who is funding the underlying information campaign that has caused these constituents to contact their Members. The constituent's views are what they are; the link between lobbyist and Congress is broken by the intercession of the citizen herself.

Various Washington-based organizations, many of which employ registered lobbyists and many of which have no membership base, have attempted to denigrate this citizen activity by referring to it as "Astroturf" lobbying, implying that it is somehow fake or fraudulent. But there is nothing fake about real citizens—that is, voters and constituents—having views on issues and calling their representatives in Washington. It simply does not matter if those views were stimulated by a newspaper editorial, a conversation with a friend, a speech at the local Rotary Club, or a paid communication. These are real people with real concerns, not "fake" or "Astroturf" constituents.

Moreover, there are many valid reasons for preferring anonymity. Anonymous speech is not illegitimate in some way. Remember that the Federalist Papers were published anonymously, in order to force readers to deal with the arguments put forth rather than engaging in ad hominem attacks against the authors. As the Supreme Court put it in McIntyre, in an opinion written by Justice Stevens, "[t]he decision to favor anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." 514 U.S. at 357.

Many members of this Committee have expressed deep concern about what was called the "K Street Project," in which it is believed that pressure was placed on organizations in Washington to hire lobbyists on the basis of partisan considerations. Of course, the identity of lobbyists is necessarily known, and the public can benefit from knowing who lobbyists are and with whom members are meeting. That is how the public can provide a check on undue influence exercised behind the scenes. But grassroots lobbying contacts do not pose the possibility of behind the scenes meetings or bribery or improper influence, because by definition grassroots lobbying relies on voters—constituents—to take action. Efforts to force disclosure of grassroots lobbying needlessly open up that field to K Street Project-type pressure. Such forced disclosure can make seasoned professionals reluctant to assist unpopular causes or those contrary to the current administration, resulting in a chilling effect that would deprive grassroots organizations of the services of talented consultants who make their livings, in part, on Capitol Hill. Indeed, those consultants most likely to abandon the field will often be those most motivated by ideology. Those motivated by pecuniary gain will have an added incentive to bear the cost of disclosure and carry on.

Finally, let me note that I have heard, in ways that cause me to believe it to be true, that some members have said that "disclosure" is, "not regulation." How absurd! If you honestly believe that, then I urge you to begin filling out the forms yourselves and imagine that you face civil and criminal penalties for any errors or late filings. Clearly, disclosure is regulation, and often the most intrusive regulation.

In summary, the Senate wisely stripped regulation of grassroots lobbying from the bill, and this House would be wise to similarly reject opportunistic efforts by various Washington-based interest organizations to stifle citizen speech. As further expli-

cation of the points raised above, I have attached to this statement a copy of CCP's Policy Primer, "Grassroots Lobbying Proposals Seem Not to Further Congress' Interest in Correcting Lobbying Abuses."

Let me now address just a few specifics of what was retained in Senate Bill 1. First, a Section 212 of S. 1 requires that registrants must file quarterly reports "Not later than 45 days after the end of the quarterly period beginning on the 20th day of January, April, July and October of each year. . . ." Accordingly, the quarterly reporting period for the first quarter of the year will be January 20th through April 19th—not January 1st through March 31st. Needless to say, using a different quarterly reporting period for Lobbying Disclosure Act purposes than is used for FEC reporting purposes will create unnecessarily burdensome accounting problems for separate segregated funds whose contributions now have to be reported to the FEC, the Clerk of the House and the Secretary of the Senate. I have been told that this was not intended, but it appears to be the law as passed out of the Senate. I urge you to bring this provision into harmony with FEC reporting dates.

More substantively, § 212 is one of the key sections of the Senate bill, requiring added disclosure of lobbyists political contributions. However, I would note that many of the terms in that section are vague and left undefined. For example, reporting is required whenever a "fundraising event was hosted, co-hosted, or sponsored." The FEC has no definition of any of these terms. An individual might raise money for an event but not be listed as a "host" or "sponsor" of the event; another person might be listed as a "host" but play no role in raising funds. Indeed, there is no clear definition even of what constitutes an "event." What is an event? Any gathering? Must it be a physical gathering, or is a video or virtual gathering sufficient? If all that is targeted is "events," will anything have been accomplished? If these terms are left vague, they subject honorable people to civil and even potential criminal penalties for honest efforts to engage in political activity, while at the same time they may not even address the issues you seek to address. I would urge you to make sure you know what the purpose this regulation is, and to see that it is appropriately targeted.

Section 116 of S. 1 would deny COLA adjustments to members who vote against them. I am one of the few people—sometimes I think the only person—in the country willing to go on record and say that I believe members of Congress ought to be paid more—substantially more—than they are currently paid. During the last campaign, I spoke publicly against the tireless demagoguery about members "voting themselves pay raises," a charge usually made by challengers who fully expected, if victorious, to receive the benefits of these past COLA adjustments. Nevertheless, I believe it very bad policy to hold a member's own income hostage to his voting in a particular way on any bill or resolution, and equally bad to create several classes of members receiving different levels of pay. Further, I do not see what this provision has to do with lobbying reform.

I would urge you to reject the Senate approach of establishing a "Commission to Strengthen Confidence in Congress." The Commission's mission, as defined in S. 1, seems to suggest partisan retaliation for legislation in some cases long past. I believe it will be destructive of efforts to create genuine, nonpartisan ethics reform, or to increase public confidence in Congress, to inform the public that you have created another "commission" with a specific mission to focus on a few laws—some passed as long as 5 years before we can expect the Commission to meet—apparently chosen for partisan reasons. Some members will no doubt draw satisfaction from such an approach, but frankly it mocks the entire ethics and lobbying reform project.

Let me conclude, generally, by urging moderation. Aim for real problems, not appearances. For example, § 212 of S. 1 requires added disclosure of contributions arranged as small as $200. There is some logic here, as $200 is the threshold for full disclosure of contributions under the Federal Election Campaign Act. Yet I doubt that any of us in this room really believe that $200 in campaign contributions is going to corrupt anybody. Such low thresholds lead to voluminous reports that can actually make it harder to find larger volumes of money.

Similarly, it is easy to dictate voluminous reporting requirements for members and staff. But be careful. Complying with formalistic reporting requirements should not become the major function of Congress. Congress must operate ethically, to be sure, but it must exist for reasons other than to comply with ethics rules as well.

There are changes, such as earmark reform, that can and should be done, many of which are included in the Senate bill. But understand that nothing you do will eliminate or prevent every episode of corruption—there simply are some corrupt people in the world—and trying to do so burdens good, ethical people and can even hinder efficient, effective government. Similarly, it is normal and healthy that the public have some skepticism of what its government is doing—nothing you can do

can eliminate all such skepticism. Finally, remember that the problem is "insider" abuses, not participation by the public at large, and avoid those who, in pursuit of their own insider agendas, urge regulation of grassroots activities.

Thank you.

ATTACHMENT

POLICY PRIMER: Grassroots Lobbying Proposals Seem Not to Further Congress' Interest in Correcting Lobbying Abuses

By Stephen M. Hoersting
and Bradley A. Smith
(614) 236-6317

Abstract

Of the several policy proposals circulating Capitol Hill to correct lobbying abuses, strengthen the relative voice of citizens, and add accountability to the earmarking process, one policy prescription seems oddly out of place. Proposals for so-called "grassroots lobbying disclosure" do nothing either to sever the link between lobbyist cash and lawmakers' pecuniary interests, or to strengthen the relative voice of citizens. Grassroots lobbying—encouraging or stimulating the general public to contact lawmakers about issues of general concern—is citizen-to-citizen communication that fosters citizen-to-lawmaker communication. It correspondingly weakens the relative strength of lobbyist-to-lawmaker communications, in furtherance of Congress' objective in seeking lobbying reform.

Efforts to limit grassroots lobbying, require disclosure of donors, or compel lobbyists to register with the government to assist groups in contacting fellow citizens, strips donors and consultants of constitutionally guaranteed anonymity, and would deprive organizations championing unpopular causes of skilled representation. This anonymity, long recognized and protected by the Supreme Court, fosters political association, guards against unwarranted invasions of privacy, and protects the citizens who fund or assist groups such as Progress for America or People for the American Way from calumny, obloquy, and possible retribution—including retribution by public officials.

Disclosure is not always a good thing. The rationale for requiring disclosure of contributions to candidate campaigns, and disclosure of direct lobbying activity, is the same for protecting anonymity in the discussion of policy issues: to protect citizens from retribution by abusive officeholders. History demonstrates that while such retribution may be uncommon, it is real. Indeed, even today we read of a Texas prosecutor who has subpoenaed donor records for a group after the group ran grassroots lobbying ads that took a position contrary to that of the prosecutor.

The abuse of non-profit entities by a handful of lobbyists to host golf trips or entertain lawmakers with donations from lobbyist clients can be cured in other ways, without enacting disclosure measures too attenuated to the problem Congress seeks to correct, and that could damage or diminish America's system of information exchange for years to come.

INTRODUCTION

Senator Dianne Feinstein recently captured public sentiment when she said that there should "be a wall" between registered lobbyists and the pecuniary interests of Members of Congress.[1] The problem is not the technical and professional information lobbyists provide lawmakers, nor is it information on the opinions of the American people that honorable and ethical lobbyists provide lawmakers everyday. Indeed, it is the relative voice of the average citizen that the Senator wants to strengthen. This is why Senator Feinstein and Senate Rules Committee Chairman Trent Lott have proposed bringing sunlight to the earmarking process and other measures that would weaken the link between lobbyist cash and lawmaker policy.[2] Senators Lott and Feinstein are not alone. Other proposals include gift bans, travel restrictions, other types of earmark reform, revoking floor privileges of former lawmakers, slowing the "revolving door," and limiting lobbyist donations to charities affiliated with Members, to name a few. What all of these proposals seek to do is to limit the direct pecuniary exchange between lobbyists and lawmakers.

Circulating among these provisions, however, is another recommendation that is oddly out of place. It has little or nothing to do with reducing the coziness between

lobbyists and lawmakers. These are the so-called "grassroots lobbying disclosure" provisions now under consideration in various quarters, which require organizations and associations to disclose in detail their efforts to run issue-oriented advertising aimed at fellow citizens, and in some cases, to identify donors.

In proposals to disclose grassroots lobbying, we are witnessing two canons of political law on an apparent collision course: that government corruption is cured by disclosure; and that the right of individuals to speak and associate freely depends upon their ability to do so anonymously. But the conflict is a false one—a byproduct of fuzzy thinking—because both canons achieve the same purpose when each is applied to its proper context. Both protect citizens from abusive officeholders. Disclosure regimes for campaign contributions protect citizens from officeholders who have free will and can confer benefits on large contributors (and pain on opponents) by passing future legislation. Disclosure regimes for true lobbying activities, that is, consultants engaged in face-to-face meetings with officeholders, protects citizens in a similar manner.

Regimes that protect the right to speak anonymously with fellow citizens about issues, even issues of official action or pending legislation, also protect citizens from abusive officeholders by reducing an officeholder's ability to visit retribution on those who would oppose his policy preferences. Citizens learn much about the relative merits of a candidate by knowing who supports him. They learn about the legislative process by knowing who is paying consultants to meet with officeholders directly. But citizens learn little about the relative merits of a clearly presented policy issue by knowing who supports it. Grassroots lobbying registration and disclosure regimes that would provide honest citizens and abusive officeholders alike with knowledge of which groups and individuals support which issues, including the timing and intensity of that support, impose too high a cost for too little benefit in a constitutional democracy.

THE VALUE OF GRASSROOTS LOBBYING

Far from being part of the current problem, grassroots lobbying is part of the solution to restoring the people's faith in Congress. Polls show that Americans are fed up with what is increasingly seen as a corrupt Washington way of business. Ninety percent of Americans favor banning lobbyists from giving members of Congress anything of value. Two-thirds would ban lobbyists from making campaign contributions. More than half favor making it illegal for lobbyists to organize fundraisers.[3] Seventy six percent believe that the White House should provide a list of all meetings White House officials have had with lobbyist Jack Abramoff.[4] But there is no evidence whatsoever that the public views grassroots lobbying activity as a problem.

Indeed, even the name grassroots "lobbying" (as opposed to "activism," "communication," or other term) is in some sense a misnomer. "Grassroots lobbying" is merely the effort to encourage average citizens to contact their representatives about issues of public concern. It is not "lobbying" at all, as that phrase is normally used outside the beltway, meaning paid, full-time advocates of special interests meeting in person with members of Congress away from the public eye. What the public wants is what Senator Feinstein and others have recognized—they want to break the direct links between lobbyists and legislators, thus enhancing the voice and influence of ordinary citizens. They do not want restrictions on their own efforts to contact members of Congress, or on the information they receive about Congress.

Contact between ordinary citizens and members of Congress, which is what "grassroots lobbying" seeks to bring about, is the antithesis of the "lobbying" at the heart of the Abramoff scandals. It is ordinary citizens expressing themselves. That they are engaged or "stimulated" to do so by "grassroots lobbying activities" is irrelevant. These are still individual citizens motivated to express themselves to members of Congress.

Regulation that would hamper efforts to inform and motivate citizens to contact Congress will increase the power of professional lobbyists inside the beltway. Regardless of what lobbying reform is passed, not even the most naïve believe it will mean the end of the professional, inside-the-beltway lobbyist. Thus, grassroots voices remain a critical counterforce to lobbying abuse. Recently one member of Congress expressed his concern that Jack Abramoff's Indian Tribal clients were used to contact Christian Coalition members, "to stir up opposition to a gambling bill."[5] But it cannot be denied that the individuals who responded to that grassroots lobbying were ordinary citizens who were, in fact, opposed to a gambling bill. They are precisely the type of people that Congress ought to hear from, rather than or in addition to inside-the-beltway lobbyists. Regardless of how they learned about the issue, they had to make the decision that the issue was important to them, and take the time to call Congress.

Disclosure of the financing, planning, or timing of grassroots lobbying activities adds little, and will often be harmful, leading to exactly the type of favoritism and/or negative pressure that the public abhors. No member of Congress even remotely in touch with his district will be unaware that a sudden volume of calls coming from his or her district is possibly, if not probably, part of an orchestrated campaign to generate public support. But because the callers themselves are real, there is little to be gained by knowing who is funding the underlying information campaign that has caused these constituents to contact their Members. The constituent's views are what they are; the link between lobbyist and Congress is broken by the intercession of the citizen herself.

Disclosure, however, comes with a price. The most obvious is that it re-establishes the link between the lobbyist and the officeholder. When the source behind the grassroots campaign is anonymous—either a donor or consultant—the opportunity for favoritism, and for retaliation, is gone. Mandatory disclosure reintroduces that link. It is true that many financiers of grassroots lobbying campaigns are happy to be publicly identified—for example, George Soros and Steve Bing make no bones about their efforts to educate the public. Unions, and some trade associations, such as the Health Insurance Association of America (HIAA) in its 1994 ads urging citizens to oppose a national health plan, are more often than not open about their activities. But others prefer anonymity, and there are many reasons for wanting anonymity and for providing its protection.

To use the example of HIAA, under the national health plan proposed by the Clinton Administration in 1994, private insurance companies were to have a major role in administering the plan. But it would be a role achieved through a bidding process. A company donating money or expertise to an HIAA ad campaign against adoption of the plan might sincerely believe that the plan was bad for America, but be prepared to bid to administer the plan had it passed. And even if the plan failed, companies in such a highly regulated industry might wish to avoid retaliation from disappointed lawmakers who had supported the plan. Such a company might therefore prefer anonymity. Anonymity would protect it and its lobbyists from retaliation, favoritism and government pressure—precisely the result that Congress is seeking to achieve in lobbying reform.

Others will have other reasons for anonymity. A prominent Democrat may not want to be identified as having consulted on ads urging citizens to support the nomination of Samuel Alito to the Supreme Court; a prominent Republican consultant may not want to be identified as being on the other side. Some donors simply don't want to have their donations to grassroots lobbying known so that they will not be approached for added donations. In each case, anonymity not only protects the donor or consultant, it prevents favoritism, retaliation, and improper pressure by government officials.[6] As Justice Stevens stated for the Supreme Court in McIntyre v. Ohio Elections Commission, anonymous speech, "exemplifies the purpose behind the Bill of Rights and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression."[7]

Anonymous speech aimed at rousing grassroots opinion is a long and honored tradition in American politics. Alexander Hamilton, James Madison, and John Jay authored the Federalist Papers anonymously. Most of the opposition to the ratification of the Constitution was also published anonymously by such distinguished Americans as Richard Henry Lee, then New York governor George Clinton, and New York Supreme Court Justice Robert Yates.[8] Other famous Americans known to have engaged in anonymous "grassroots lobbying" include Thomas Jefferson, Abraham Lincoln, Winfield Scott, Benjamin Rush, and New Jersey Governor William Livingston.[9]

GRASSROOTS LOBBYING DISCLOSURE PROVISIONS ARE UNRELATED TO THE PURPOSE OF LOBBYING REFORM

Grassroots lobbying disclosure proposals amend the Lobbying Disclosure Act of 1995 to reach any employment of paid lobbyists to urge the general public to contact a Federal official about an issue of general concern. Proposals require "grassroots lobbying firms" (or organizations that employ lobbyists) to register with the Secretary of the Senate or Clerk of the House of Representatives not later than twenty days after being retained by a client. Most proposals require reporting of all amounts paid for grassroots lobbying activities, or amounts paid to "stimulate" grassroots lobbying, including separate disclosure for all paid advertising. This typically includes monies spent for preparation, planning, research, and background work, as well as monies spent coordinating lobbying activities with other organizations. One approach would expose nonmembers of an organization who donate above a certain level—typically $10,000—as a separate "client" listed on the lobbying disclosure form. Such changes would dangerously expand the scope of an understand-

able reform effort into uncharted and unconstitutional territory. They would drive many publicly spirited persons on either side of an issue—those who care passionately about nothing more than the proper administration of justice, for example, in the case of the recent Samuel J. Alito confirmation hearings—out into the open, and perhaps, therefore, out of future debates altogether. They would make seasoned lobbyists reluctant to assist unpopular causes or causes contrary to the current administration. Compelled disclosure robs such donors or consultants of constitutionally protected anonymity, often subjecting them to calumny, obloquy and possible retribution by entrenched interests fighting on the other side, especially when the other side is the government itself. This would have a chilling effect on donors to issues organizations on both sides of the aisle, and deprive organizations of the services of talented consultants who make their livings, in part, on Capitol Hill. Indeed, those most likely to withdraw from the field will often be those motivated by ideology. Those motivated by pecuniary gain will have an added incentive to bear the cost of disclosure and carry on.

To clean up the Abramoff mess there is no reason to smoke out the more generous donors to groups like Progress for America or Alliance for Justice, or to make consultants fearful to assist those organizations with controversial issues. Even if those groups hired lobbyists for any purpose, including as consultants who know best how to craft a message, donations to those groups for grassroots lobbying do not support direct lobbyist-to-lawmaker contact—the source of public concern. (Nobody cares if a lobbyist flies on a corporate jet—what they object to is his giving rides to congressmen on a corporate jet!). Grassroots lobbying fosters citizen-to-citizen communication, and later, citizen-to-lawmaker communication. The message consists of information for citizens, and an appeal to those citizens to take part in a public discussion. Some citizens will get involved because they agree with the message and share its concern; others because they disagree; and still others will not get involved at all. With even the most effective grassroots lobbying, however, there is always an intervening decision made by the citizen to get involved or not to get involved, and to decide on which side of the issue to get involved, to what degree, and in what capacity. The aggregate of those individual decisions is itself critically important and valuable information to the lawmaker.

Lawmakers are representatives of the people. No matter how citizens first hear of a pending legislative issue, when they engage they are engaging in citizen-to-lawmaker communication; the citizens making the calls are not registered lobbyists. With the decision to contact lawmakers, from whatever side of the debate, citizens reduce the relative power of lobbyist-to-lawmaker communication, which is precisely the power shift the public wants to see, and is the shift most needed in an era of unlit, undisclosed earmarking and lobbying scandal.

GRASSROOTS LOBBYING DISCLOSURE PROVISIONS MAY BE UNCONSTITUTIONAL

In addition to complex policy questions surrounding society and its information exchange, regulation of grassroots lobbying raises constitutional concerns. The Supreme Court has recognized that "there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs." [10] In Buckley v. Valeo, the Supreme Court held that regulation of political speech and association is constitutionally justified only to prevent corruption or the appearance of corruption in government, by preventing the exchange of favors that flows from an inordinate connection or nexus between campaign donors and lawmakers.[11] In McConnell v. FEC, the Supreme Court extended the rationale to guard against the appearance of corruption created by "access" to politicians.[12] Neither grassroots lobbying aimed at citizens, nor any ensuing contact by citizens to members of Congress, creates the reality or appearance of corruption. And both work to alleviate the problem of unequal access noted in the McConnell decision.

Anonymous grassroots lobbying has received unwavering First Amendment protection from the Supreme Court.[13] As recently as 2002, the Supreme Court invalidated a "village ordinance making it a misdemeanor to engage in door-to-door advocacy [with fellow citizens] without first registering with the mayor" as a violation of "the First Amendment protection afforded to anonymous . . . discourse." [14] And there is no doubt that retribution is real. It is not hard to imagine, for example, why the State might have wanted to know the names of all members of the NAACP in 1950s Alabama, and why the Supreme Court said in response to Alabama's desire to learn those names that "[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action." [15] It is also easy to imagine the leverage Alabama could have put on the NAACP, and the potential damper on the civil rights movement, if 1950s Alabama knew about the NAACP

what the twenty-first century Congress proposes to learn about grassroots organizations. What could Alabama have done had it known: when the NAACP engaged in preparation, planning, research, or background work; when it coordinated activities with like minded organizations; when the organization proposed to engage its fellow citizens with advertising and in what quantity; or knew the names of the consultants that would assist them in the effort?

Nor are these merely episodes of the past. In what many consider a blatant attempt at intimidation, a Texas county prosecutor recently subpoenaed the donor records of a group called the Free Enterprise Fund after it ran grassroots lobbying ads critical of his behavior in office.[16] It is easy to forget when rushing to correct lobbyist excess, even excess covered by current law, that citizens can be intimidated and harassed by officials. In McIntyre v. Ohio Elections Commission, Margaret McIntyre, a local anti-tax activist who distributed fliers opposing a school levy, was warned she was not properly identified on them. Nonetheless, she distributed fliers at the Middle School, where her children faced potential retaliation from school officials. An assistant schools superintendent who learned McIntyre's identity filed a complaint with the Ohio Elections Commission in what one Ohio Justice characterized as "retribution against McIntyre for her opposition."[17] The Supreme Court of United States invalidated the Ohio statute, stating that "[t]he decision to favor anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible."[18]

Requiring even the most grizzled or politically connected lobbyists to register and report their attempts to solicit citizens on behalf of an organization is also suspect. In Thomas v. Collins, the Supreme Court struck down a Texas statute that required labor organizers—defined as "any person who for . . . financial consideration solicits [citizens] for membership in a labor union"—to register with the Secretary of State, provide his name and union affiliations, and wear a State-issued organizer's card before soliciting membership in a labor union.[19] The State claimed the statute affected only the right to engage in business as a paid organizer. The Court, however, held there was a "restriction upon the right [of the organizer] to speak and the rights of the workers to hear what he had to say,"[20] and stated that it is "in our tradition to allow the widest room for discussion, and the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly."[21]

The potential for elite firms and private consultants to avoid unpopular causes to protect their long-range economic interests, and, in turn, to deprive unpopular organizations of competent representation is not implausible. For example, in 2004, two radio jockeys in Washington State (who, by the nature of radio, lacked anonymity) stimulated grassroots activity by advocating the repeal of a newly passed 9.5 cents per-gallon increase in the Washington state gasoline tax.[22] The jockeys were persuasive, and partly responsible for an anti-tax initiative making the ballot with the fourth-highest number of signatures of any measure in the history of Washington State. The cities of Auburn, Kent, and Seattle filed suit against the radio jockeys and their station five months before Washington's citizens would decide the fate of the tax repeal. Id. The cities claimed that the jockeys failed to report their commentary to the State as in-kind contributions to the anti-tax initiative,[23] which, had it passed, would have cost the State of Washington $5.5 billion.[24] Both parties to the litigation are being represented for free; the cities by Foster Pepper PLLC, one of the largest law firms in the Pacific Northwest, with over 130 attorneys, and the firm handling the State of Washington's bond issue for the gas tax increase. The radio jockeys found free representation in a non-profit, public-interest law firm, headquartered 3000 miles from Washington State.[25]

LOBBYIST ABUSE OF NON-PROFIT ORGANIZATIONS CAN BE ADDRESSED IN OTHER WAYS

Jack Abramoff allegedly abused non-profit organizations to cozy up to lawmakers, shelter income, bankroll golf junkets, or bolster the bank account of his Washington restaurant.[26] Some cite this abuse of outside organizations as demonstrating a need to require disclosure of citizen donations to issue campaigns. But Congress may prevent lobbyists from hiding gifts or bribes, or financing golf trips to Scotland in more direct ways. Congress could require disclosure by lobbyists, or perhaps even by non-profit organizations themselves, when the non-profit makes direct contact with a lawmaker, that is, when a non-profit organization hosts or entertains lawmakers with donations from or directed by lobbyists, or when the non-profit accepts gifts from lobbyists with instructions to lavish a portion of it on lawmakers. But the passing of pecuniary interests from lobbyists to lawmakers through non-profit organizations is not a justification for requiring citizens who donate to issue campaigns, or

the recipient organizations, to disclose the amount of those donations, the timing of those donations, or the name and home address of the donor.

CONCLUSION

Anonymous grassroots lobbying is a long and honored tradition, engaged in by many of the greatest Americans, including Lincoln and Jefferson. The United States Supreme Court has recognized that anonymous grassroots lobbying is entitled to the fullest protection of the First Amendment.

The problem of lobbying abuses is one of lobbyist influence outside the light of scrutiny. It is not a problem of citizen influence. Grassroots lobbying encourages citizens to get involved, and the involvement of citizens breaks the link between lobbyists and lawmakers. Hence, grassroots lobbying should be encouraged in every way possible, not discouraged, as a way to restore the trust of the American people in Congress.

Stephen M. Hoersting is the Executive Director of the Center for Competitive Politics and former General Counsel to the National Republican Senatorial Committee.

Bradley A. Smith, former Chairman of the Federal Election Commission, is Senior Advisor to the Center for Competitive Politics, and Professor of Law at Capital University Law School in Columbus, Ohio.

The Center for Competitive Politics seeks to educate the public on the benefits of free competition, fairness, and dynamic participation in the political process.

Nothing in this primer should be construed as advocacy for or against any legislation.

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[1] Tory Newmeyer, *Hill Eyes a Treasure Trove,* ROLL CALL, Feb. 13, 2006.

[2] Spotlight, *Politics: Earmark Debate Starting to Focus on Transparency, not Reduction,* ENVIRONMENTAL AND ENERGY DAILY, Feb. 9, 2006.

[3] ABC News Washington Post Poll, *Majorities See Widespread Corruption, Want Tougher Lobbying Restrictions,* Jan. 9, 2006, available at http://abcnews.go.com/Politics/PollVault/story?id=1487942.

[4] ABC News Washington Post Poll, *Majorities Disapprove of Bush on Ethics, Favor Release of Abramoff Meeting Records,* Jan. 27, 2006, available at http://abcnews.go.com/Politics/PollVault/story?id=1547685.

[5] Congressional Quarterly, *Transcript of Hearing, Senate Committee for Homeland Security and Governmental Affairs,* Jan. 25, 2006 (comments of Senator Durbin).

[6] *See e.g.* James Nash, *Political Ties Costs Law Firms,* COLUMBUS DISPATCH, Feb. 15, 2006 at B1.

[7] McIntyre v. Ohio Elections Commission, 514 U.S. 334, 357 (1995).

[8] Id. at 343.

[9] Bradley A. Smith, Unfree Speech: The Folly of Campaign Finance Reform 7, 18 (2001); *McIntyre,* 514 U.S. at 361, 363 (Thomas, J., *concurring in the judgment.*)

[10] Mills v. Alabama, 384 U.S. 214, 218 (1966).

[11] Buckley v. Valeo, 424 U.S. 1 (1976).

[12] McConnell v. Federal Election Commission, 540 U.S. 93 (2003).

[13] *See* McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995); Talley v. California, 362 U.S. 60 (1960); NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1956). *See also* First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978) (non-anonymous corporate speech on public issues protected by First Amendment).

[14] Watchtower Bible v. Village of Stratton, 536 U.S. 150 at 153, 160 (2002).

[15] NAACP v. Alabama, supra note 13, 357 U.S. at 462 (1956).

[16] Robert Novak, *DeLay Prosecutor Subpoenas Critics,* HUMAN EVENTS ONLINE, Dec. 16, 2005. There was no dispute that the ads were unconnected to any election.

[17] Duane St. Clair, *Campaign Pamphlets Must Bear Source, Court Says,* COLUMBUS DISPATCH, Sep. 26, 1993 at 5B.

[18] McIntyre, supra note 7, 514 U.S at 341–342 (1995).

[19] Thomas v. Collins, 323 U.S. 516, 519, n1 (1945)

[20] *Id.* at 524

[21] *Id.* at 530.

[22] Neil Modie, "Gas Tax Foes Are Fighting Back," THE SEATTLE POST-INTELLIGENCER, p. B1 (Aug. 10, 2005).

[23] *Id.*

[24] Editorial, "Gas Tax Repeal: Pennies or Projects?" THE SEATTLE POST-INTELLIGENCER, p. C2 (July 10, 2005).

[25] Modie, *supra* note 22.

[26] Chuck Neubauer and Richard B. Schmitt, *Abramoff's Charity Began at Home,* LOS ANGELES TIMES, Feb. 11, 2006, at A1.

Mr. NADLER. Thank you, Professor, and I congratulate you also for being under the 5-minute limit.

Mr. Mann?

TESTIMONY OF THOMAS MANN,
THE BROOKINGS INSTITUTION

Mr. MANN. Thank you, Mr. Chairman.

I wish I could say, "Oh, shucks, I am from a town of 300 in Ohio." Instead, I have to admit I am from Milwaukee, Wisconsin, which is much, much bigger.

I am delighted to be with you. Thank you for inviting me.

As the Chair said, this process of lobbying and ethics reform has begun with the adoption of the House rules. There is a bipartisan task force at work looking into the possibility of building in some independent capacity into the ethics process. Your Subcommittee is appropriately dealing with a lobbying disclosure act and possible amendments to it.

I believe, like others, S. 1 is an excellent point of departure for you. There are many sort of, I think, excellent and non-controversial provisions in this bill that has passed the Senate. And I urge you to use it as a basis.

But, obviously, there are two elements that are controversial that are included in S. 1, and one that is not, that is even more controversial, as the statement from the Ranking Member, Mr. Franks, has indicted.

Let me just say, on the matter of, if you will, making, arranging or collecting political contributions, I believe Mr. Nadler, the Chair's statement about money is absolutely correct. I believe, in this case, disclosure, transparency is the best alternative.

And let me say, I don't view this as nefarious lobbyists trying to ply you with money and to gain special advantage from doing so. Frankly, I think you, as Members, individuals, as political parties and the like, frankly, are under too much temptation to ask for too much help from those who have business before you.

And, in some respects, the best thing about transparency here is that, if you think it is legitimate, if it won't compromise your ability to make independent decisions on what those lobbyists want out of Congress, even though they are setting up fundraisers for you and arranging other contributions for you, then you should have no objection to having that information public. I think it is perfectly legitimate for you to make the case that it is legitimate, but, then, why can't the public know about it as well?

Second provision has to do, of course, with the revolving-door provision. Again, we have a problem here. More and more Members and staff are going to work immediately for lobbying firms. This does not exactly set the tone that one would like. There is just too much of a perception of private gain from public service.

There is nothing wrong with lobbying, but if we could just put a little breathing room in there, so that Members who are leaving voluntarily or are defeated, and staffers, aren't sort of so immediately and constantly thinking about how they will build their lobbying business, it would be a healthy thing.

Ken raised appropriate points about the language, but I think it is all—it is doable here, and I urge you to look hard at that recommendation.

The third provision, final, is the grassroots lobbying.

Mr. Franks, if I thought any language would be passed by this Subcommittee and Committee and full House that had the effect of

restricting those people you talked about, I would strongly oppose it. So I am with you on the statement.

But from what I understand, we are talking about no individuals, no lobbying organizations. We are talking about lobbying firms and firms that are engaged in providing paid advertising to influence specific legislative provisions with a $100,000-a-quarter provision. It doesn't require any new registration or reporting by individuals and existing organizations, except those that are simply in the business of doing—the reality is we are not talking about old-style, grassroots lobbying.

We are talking about a very different set of activities, now, that is central to lobbying in Washington. There is a lot of research on this. It is a reality.

I urge you, Mr. Franks, to approach this with an open mind, and if language can be found that achieves that broader objective of massively funded lobbying campaigns by paid media and exempts everything else, then maybe it is a good thing.

Thank you.

[The prepared statement of Mr. Mann follows:]

PREPARED STATEMENT OF THOMAS E. MANN [1]

Mr. Chairman and other members of the Subcommittee, thank for you inviting me to share my views of S. 1, the bill on lobbying reform passed by the Senate earlier this year. The prosecution and guilty pleas of lobbyist Jack Abramoff, Representatives Randy "Duke" Cunningham and Bob Ney, and several former congressional staff have understandably brought to public attention the adequacy of laws, congressional rules, and enforcement mechanisms regulating the interactions between lobbyists and Members of Congress and their staffs. These scandals, ongoing investigations of others, and the widespread public perception of a culture of corruption in Washington could provide the boost required to enact long-needed changes in that regulatory system.

Lobbying has changed dramatically in recent years. The number of registered lobbyists has tripled. Budgets for Washington representation and grassroots lobbying have risen exponentially. Retiring or defeated Members are now more likely to stay in Washington and join their ranks. Congressional staff routinely move from Capitol Hill to lobbying shops around town. Some Members have been actively involved in placing their staff and those of their colleagues in key positions within the lobbying community. Many Members enlist lobbyists to help raise campaign funds for their re-election campaigns, leadership PACs, endangered colleagues, and political party committees. The escalating cost of campaigns has put intense pressure on Members, even those with safe seats, and lobbyists to raise and contribute substantial sums of money. At the same time, more opportunities exist for Members and their leaders to deliver benefits to lobbyists and their clients. These include earmarks, in appropriations and authorization bills; invitations to participate in informal mark-up sessions in party task forces, standing committees, and conference committees; amendments added late in the legislative process under the veil of secrecy; and letters and calls to executive branch officials. These conditions foster practices that risk conflicts of interest and unethical or illegal behavior.

The House began the process of ethics and lobbying reform at the start of the 110th Congress by enacting in H. Res. 6 a number of rules changes governing gifts, privately-financed travel, and earmarks. A bipartisan task force has been commissioned to recommend ways of strengthening the ethics process in the House, including some role for an independent panel composed of former Members and others. What remains to be done is the enactment of changes in law, most importantly the Lobbying Disclosure Act of 1995 (P.L. 104–65), enhancing the transparency of interactions between Members of Congress and lobbyists.

S. 1 is an excellent point of departure for your deliberations on this latter responsibility. That bill, for example, very constructively requires quarterly, instead of

[1] The views expressed in this testimony are solely my own and should not be ascribed to the trustees, officers, or other staff members of The Brookings Institution. A brief resume is attached.

semiannual, filing of lobbying disclosure reports, which are then made available to the public in a timely and useable fashion on the Internet. It also increases the penalties for failure to comply with lobbying laws and provides for a GAO audit of lobbying reports.

One of the most important provisions of S. 1, and also one of the most controversial, adds new language requiring lobbyists to disclose contributions they make, arrange, or collect for Members, candidates, leadership PACs, and political parties. These provisions, contained in Section 212 of the Senate bill, are identical to the language of H.R. 633, introduced by Representatives Chris Van Hollen and Marty Meehan. Unlike the restrictions on gifts and travel by lobbyists to Members already contained in the House and Senate rules, the new language provides for transparency, not prohibition. While federal campaign finance law requires candidate and political committees to disclose the source and size of contributions of at least $200, including those from lobbyists, lobbying disclosure law is silent on contributions. Yet many lobbyists are actively involved in political fundraising for Members they seek to influence. In addition to direct contributions, these efforts include administering leadership PACs, hosting fundraising events, and soliciting contributions from others (commonly known as "bundling").

I believe public disclosure of these contributions from lobbyists to members and their political and party committees would serve the broad public interest without unduly invading the privacy rights of lobbyists or making unreasonable reporting demands on them. The language is carefully crafted to allow "good faith estimate(s)" of funds raised from events or solicitations when precise figures on such amounts are not available. To the extent Members believe such contributions are legitimate forms of political participation and do not compromise their ability to make independent decisions on legislative matters of interest to the lobbyists making the contributions, Members ought to be willing to make them transparent. The inclusion or exclusion of this provision in the legislation adopted by the House is likely to determine the seriousness of its response to the scandals associated with Jack Abramoff and the K Street Project.

Another important and, therefore, controversial provision of S. 1 deals with the "revolving door" problem. Current law (18 U.S. C. 207) provides for a one-year cooling off period before former Members can lobby the legislative branch; also, former senior congressional staff may not lobby their former employer, whether Member or committee, for the same amount of time. The Senate bill extends the cooling off period for Members from one to two years; the comparable period for senior congressional staff remains one year, but the prohibition on lobbying activity is extended to the entire Senate. In addition, the Senate bill expands the lobbying activities covered during the cooling off period from only direct contacts to include behind-the-scenes activities, advice, or consultations in support of lobbying contacts.

Make no mistake, this is a very tough provision. It would make former members and senior congressional staff less marketable in the lobbying community upon their departure from Congress and reduce their immediate post-Congress career options. But it would likely have a healthy impact on the policy process and the state of American democracy. The newly-defined cooling off period would encourage more diverse career patterns among former Members and staff, diminish the payoff from privileged connections and enhance the benefits of genuine expertise, and begin to change a culture fostering the quest for private gains from public service. I urge you to retain this language in the House bill.

The last item I would like to raise with you is one that is absent from the Senate bill, after a successful floor amendment to delete it from the underlying bill. Grassroots lobbying campaigns now constitute a major part of lobbying activities. Huge sums are spent on paid media, computerized phone banks, direct mail, and other forms of public communications to stimulate lobbying of Congress by citizens. Yet professional grassroots ("Astroturf") lobbying organizations and lobbying firms are not required to report on the sums they spend on these campaigns. It makes little sense to exclude these activities whose costs may well exceed expenditures for direct lobbying.

The trick is to define these organizations and activities in a way that does not restrict the free flow of information. New requirements must also be crafted to avoid placing new reporting burdens on organizations that spend relatively small sums on grassroots lobbying or that are communicating with their own members or with the general public to recruit new members. I understand efforts to amend the original Senate language to reflect these concerns are well underway in the House. I urge you to bring these negotiations to a successful conclusion and include a grassroots lobbying disclosure provision in the House bill.

In sum, I recommend that you look favorably on S. 1, in particular its provisions regarding the disclosure of political contributions (including bundling) and the slow-

ing of the revolving door between Congress and the lobbying community. I also recommend that you include in the House bill a provision to require the disclosure of sums spent on behalf of major grassroots lobbying campaigns. When combined with the new House rules adopted in January and a strengthened ethics review and enforcement process now being considered by a bipartisan task force, such a lobbying reform bill would go a long way in responding to scandals of recent Congresses and improving the ethical climate in Washington.

Mr. NADLER. Thank you very much.

The direct testimony of the witnesses has concluded.

As we ask questions of our witnesses, the Chair will recognize Members in the order of their seniority in the Subcommittee, alternating between majority and minority, provided that the Member is present when his or her turn arrives. Members who are not present when their term begins will be recognized after the other Members have had the opportunity to ask their questions. The Chair reserves the right to accommodate a Member who is unavoidably late or only able to be with us for a short time, especially if there is a competing Committee meeting at the same time.

I will begin by recognizing myself for 5 minutes.

Mr. Gross, you said in your testimony that the bundling provision, as written in S. 1, is vague and open to misapplication. Can you give us an example of how you think this might be remedied?

Mr. GROSS. I think that if you eliminate the arranged-for part of the definition and define collecting as those checks that you physically handle and perhaps those that you forward in coded envelopes, you will narrow the ambiguity of the provision and it will coincide with the FEC definitions of what it means to be a conduit. So I think with those changes right there, you would go a long way toward improving the provision.

Mr. NADLER. Thank you.

Let me ask—starting with Mr. Gross—then comment on the other members of the panel—one of the concerns we hear about Astroturf lobbying—that is, the provision that didn't get into S. 1, but there are various suggestions about Astroturf lobbying—is that they sweep too broadly.

Do the members have suggestions as to how to clarify the definition, if necessary, between so-called legitimate—well, I won't say "illegitimate," but when you should face a disclosure requirement, when you shouldn't, if at all?

Mr. Gross first, and then——

Mr. GROSS. Well, yes, and some of those points have been brought out already in the testimony. I think that you certainly don't want to do anything that is going to affect the associational rights within an organization or sort of homegrown grassroots, if you will.

I think with dollar thresholds, as has been proposed in the S. 1 and some, I think, other drafts that are going around now, along with a specific situation where there has been an engagement for hired—call it Astroturf, call it what you want—a hired effort to artificially stimulate the community with either e-mails or letter-writing campaigns, in that situation, I think you can at least provide a law that has clarity and limited application that is not going to infringe somebody speaking on T.V.

Also, I think you need a specific call to action. If you are going to define grassroots, it should be a specific communication to call

your congressman and vote yes on H.R. 15, not some vague statement that, "I don't like the Social Security laws out there."

Mr. NADLER. But, in other words—so let me see if I understand one of the distinctions you are making. If the Right to Life Committee or Common Cause or somebody spends $100,000 on revving up the troops to write Congress, that should not be disclosable.

Mr. GROSS. Right——

Mr. NADLER. But, if the Right to Life Committee or Common Cause hires ABC law firm to stimulate people to write to Congress, that should be disclosable, if it is over a certain amount?

Mr. GROSS. Yes. I think that would be something that could perhaps withstand challenge.

Mr. NADLER. Yes.

Ms. Dufendach, the same questions?

Ms. DUFENDACH. With the exception that if that communication was to increase membership for Common Cause, it would not be included.

I think Congressman Meehan is actually working on a proposal that is far narrower than the proposal that was defeated in the Senate. And, in fact, we are told that no organization at all would ever have to disclose under the new proposal.

Even in the situation of Harry and Louise, the Health Insurance Association would not have had to disclose. Only the firm that actually did the campaign would have had to disclosure who their client was, what the issue was——

Mr. NADLER. In other words, the firm that was paid by somebody else——

Ms. DUFENDACH. Yes.

Mr. NADLER. ABC Advertising Corp. would have had to disclosure that the American Medical Association, let's say—I have no idea who did it, but the American Hospital Association, whoever, hired them——

Ms. DUFENDACH. Health insurance.

Mr. NADLER. Whatever—hired them to gin up local letter writing to Congress or whatever.

Ms. DUFENDACH. Yes.

Mr. NADLER. Thank you.

I am sorry that Mr. Meehan is not here to explain his proposal.

Does anybody else want to comment on this question?

Mr. SMITH. I would. Thank you, Mr. Chairman.

I would just disagree that the distinction really ought to be made.

Mr. NADLER. Which distinction? I am sorry.

Mr. SMITH. Well, the distinction between what should be disclosed or what should not, or, some would say, what is illegitimate or legitimate.

And I note that you began to say that and stopped. But I think—because that is what we hear all the time is a lot of these folks do think that some of the stuff is illegitimate, and we get used to talking in those terms.

It is not illegitimate. It is not illegitimate for a group to spend money to try to get citizens to talk. And I would suggest that what is wrong with Harry and Louise?

First, everybody knew who was behind Harry and Louise. This was not a big secret.

Second, what is wrong with that? American citizens watched their televisions and they saw something——

Mr. NADLER. We are running out of time.

Mr. Mann, quickly?

Mr. MANN. Thank you.

Mr. NADLER. Do you have a comment on this?

Mr. MANN. Nothing is wrong. And if nothing is wrong, what possible objection is there to the firms, not the organizations, being required to report this as lobbying activities? It is a reality. There is nothing wrong with it. It is perfectly legitimate. Let's disclose.

Mr. NADLER. Thank you, Mr. Mann.

My time has expired.

Mr. Franks?

Mr. FRANKS. Thank you, Mr. Chairman.

Professor Smith, I almost hate to ask you a question because your testimony itself was so compelling in my mind.

But, you know, the term "grassroots lobbying" encompasses a broad array of activities, such as simply encouraging other people to contact their Federal officials, regardless of their opinion on an issue.

And I am wondering if you think that criminal penalties for failure to comply that include prison and large fines would stifle large amounts of legitimate speech, when people just refrain from speaking simply to avoid an overzealous prosecutor?

Mr. SMITH. Well, surely the threat of penalties discourages people from speaking. If people think they might be subject to penalties if they get the law wrong, they don't want to do it.

The question comes up, "Well, what is wrong with requiring disclosure? It is just disclosure, you know? I mean, what is wrong with that?"

Well, you know, you don't see the letters we get from people at the FEC who were fined real money for trying to comply with disclosure laws and making mistakes. And we have to think about people.

Would it be better—I mean, there are many unpopular causes out there, and there are many of the groups that are capable of running grassroots campaigns and stimulating citizen involvement in Government who are reliant on their reputations in Congress and working in Congress.

You know, I know, Mr. Chairman, you have expressed a lot of concern about the K Street Project over the years. Well, what is grassroots lobbying disclosure, other than a way to implement another K Street Project? You find out, well, who is paying for this? What firms? And then you can pressure those firms. And you say, "We don't like your clients. We don't like who you are hiring as lobbyists."

The wonderful thing about non-disclosure is that is not a threat, and there is not a threat to Government, again, because we have that voter who is choosing to take action.

And voters are misinformed by all kinds of things. Like I said, a New York Times editorial will misinform any voter, you know? Voters get information from all kinds of sources, from talk radio,

from grassroots campaigns, from Websites, from Rotary Club speeches.

We want to encourage voters to get involved, and they are your real constituents, and you need to deal with it. And will this kind of disclosure chill speech? Sure it will. The Supreme Court has recognized that in case after case.

I will be real quick here, but Mr. Gross mentioned that he thought the court would uphold this kind of disclosure under Harris. Well, a lot of water has gone under the bridge since Harris, a lot of first amendment water in the last 50 years, including, *NAACP v. Alabama, Talley v. California.*

McIntyre v. Ohio, election commission specifically distinguished, in holding that you couldn't require disclosure, noted that Harris was different because it involved the activities of lobbyists who have direct access to elected representatives. And that is an opinion by Justice Stephens, giving a very narrow interpretation to Harris.

I think that if you take this present court and the way it has gone on disclosure, it has consistently said that only in the narrow context of specific candidate elections can you uphold it. And they have done that because they recognize, Mr. Franks, that, yes, it has a chilling effect on speech.

Mr. FRANKS. Well, thank you, Professor.

Mr. Gross, the Federalist Papers were essays written by James Madison and Alexander Hamilton. They were defending the ratification of the Constitution that we live under today, and they were written anonymously and published in newspapers under pen names, pseudonyms, precisely because those Founding Fathers wanted to cause people to think about the substance of what they were saying, rather than who was saying it.

And with sincere respect, to use your words, were they artificially stimulating pubic opinion when they did that?

Mr. GROSS. I don't know. In that situation, probably not. The words "artificially stimulating" come from the U.S. Supreme Court in the Harris case. And I guess, you know, it is a question of definition whether this is a hired effort in the modern-day, sophisticated effort to influence thinking.

I certainly would distinguish any homegrown effort, such as the Federalist Papers, and there is some Supreme Court support for anonymity for that type of distribution in the *McIntyre* case, as Professor Smith has mentioned.

But I do think that can be distinguished from the hiring of outside vendors to engage in certain types of—we call it Astroturf, call it what you will—communications with a call to action with dollar thresholds in it.

It is a challenge. It is not the easiest thing in the world to do, I would admit that, but I think it can be done.

Mr. FRANKS. Thank you, Mr. Chairman. I think it would be tough for me to get another question in.

Mr. NADLER. Well, thank you.

The distinguished Chair of the Committee, Mr. Conyers?

Mr. CONYERS. Thank you, Chairman Nadler.

There are so many fine lines here, but I would like to begin with the question about independent ethics commission, because, as I

understand it, Common Cause thinks this is a good idea, and ACLU does not—two of my friendly organizations.

Could you begin a discussion with this, Ms. Dufendach?

Ms. DUFENDACH. I am unaware that the ACLU has said that, but I can give you an idea about why Common Cause thinks that it is a good idea.

I think perhaps the best way to say this is, at this point, the Ethics Committee in the House has so little credibility that it cannot even protect the innocent. It cannot even, with any credibility, dismiss a complaint that is completely frivolous, because no one has any faith in it.

And the thing that might be the most benefit to Members right now is that an independent body could, in fact, do that, could do it quickly, swiftly and have penalties for people who purposefully file a frivolous complaint.

At this point, the Ethics Committee can't—it has been proven that it doesn't hold the guilty to task, and it can't even really protect the innocent.

If you have a specific question about constitutionality or anything like that, I could go forward with that. Otherwise, I will stop.

Mr. CONYERS. Well, we were hoping that the Ethics Committee had a new slate, now that they are in a new Congress with a great change in their membership. We don't want to have the problems of the past just hang over whoever joins the Committee from this point on. Goodness knows we wouldn't want that to happen to the Judiciary Committee.

Ms. DUFENDACH. If I could just comment. Frequently, people say that if only the right people could get put on the Ethics Committee, it would function. But I think over the last 30 years, at some place—who decides who are the right people? And over the last three decades, it has proven that it can't. It either——

Mr. CONYERS. You don't think there have been any——

Ms. DUFENDACH [continuing]. Too much or doesn't do enough.

Mr. CONYERS. There have been some right people.

Ms. DUFENDACH. Well, I think the idea of the institutions of a democracy are to set up systems and functions where, no matter who is in control, the system will allow the democratic process to move forward.

Mr. CONYERS. Ken Gross, do you think this is a stretch here that we should try to keep an independent ethics commission or that it might create constitutional problems?

Mr. GROSS. It is conceivable that you could set up an investigative body that wouldn't abridge constitutional concerns.

I am kind of lukewarm on it. I think a lot of the problems that the Ethics Committee has had are procedural problems that only one Member can file a complaint at another Member. And people don't like firing lines assembled in the shape of a circle.

And, you know, I think if there were complaints, credible complaints that could come in, and the Ethics Committee is staffed properly, that it could be handled within that mechanism without creating another entity, another process, which will have investigative powers only, which will, then, ultimately, have to refer, presumably, to an ethics commission. So I think with modification of

some of the procedures that were in place, we don't have to go that route.

Mr. CONYERS. Professor Smith, I wasn't clear on why you thought calling Astroturf—using the term "Astroturf" lobbying is something that you consider distasteful. When I hear the term, I am thinking of the phenomenon of groups that are pretending that they are grassroots groups and they are really not at all. They are the product of some clever consultant. How do you view that?

Mr. SMITH. Yes, Mr. Chairman. Let me say here is what I would think of in my definition as an Astroturf lobbyist: There is a group that is pushing for this regulation that is an organization called Democracy 21. It is headed by a guy named Fred Wertheimer.

They have no members. Fred Wertheimer is a registered lobbyist. His power comes because his wife is a prominent journalist, and he has direct access to the editorial pages of The New York Times, right?

To me, he is an Astroturf lobbyist. He purports to come in and speak for the American people, but he speaks for himself. He doesn't have any members to account to or anything. It is funded by a few foundations.

When a group, even if it is a business group or something, goes out and contacts your voters, they are contacting people who are real voters. They are members of what we call the grassroots. And if those people choose to contact you, they are still grassroots real voters, who are now contacting you.

And so I think this idea that their opinions are somehow false, or Astroturf, because somebody was paid to contact them is very wrong. And I cannot understand the philosophy would say, "There is absolutely nothing wrong with this, but we need to regulate it."

Mr. CONYERS. Let me ask Ms. Dufendach if she agrees with the Wertheimer comparison, since he came out of—didn't he start Common Cause?

Ms. DUFENDACH. No, no, no. John Gardner started Common Cause.

Mr. CONYERS. Very well. Okay.

Mr. NADLER. The gentleman's time has expired, but I will permit Ms. Dufendach to answer the question.

Ms. DUFENDACH. I think when asked what is the problem that we are trying to correct here, what it is is you have got $17 million, $20 million worth of ad campaigns going on nationwide. Everybody is seeing them. It does make a difference who is the sponsor of them. It serves to put context to what is being said.

No one is saying that they can't do it. Nobody is saying that they don't have the right to lobby, and lobby in this way.

All we are saying is please let us know who is behind this, so we can judge for ourselves what the message is or the motive or the objective of this particular ad campaign is.

Common Cause is a grassroots organization. If I thought that this was going to imperial our talking with our Members or in any way doing our grassroots, I would not be so in favor of it.

I will also just say that the Sierra Club was opposed to the Senate version of this Astroturf. They now have seen the very narrow new proposal that is being crafted, and they are for it.

Mr. NADLER. Thank you, Ms. Dufendach.

The gentleman from Indiana?

Mr. PENCE. Thank you, Mr. Chairman. I appreciate you holding this hearing and the civility with which it is being conducted, and the thoughtful presentations of the panel.

With regard to the independent ethics commission, I would observe that it is interesting. I find your comments provocative, Ms. Dufendach.

But it does seem to me that the call for an independent ethics commission in Congress was a call for creating something similar to the Independent Counsel Act that there is broad bipartisan opinion in Washington that that has been a disaster, to create kind of an extra constitutional agency of Government.

Whitewater investigations become investigations into lying about sex with interns. Investigations into classified leaks become prosecutions over perjury before grand juries. I would just observe that as a cautionary note with regard to that comparison for your consideration.

Let me just say, I supported bipartisan legislation in the House in January for greater disclosure. I commend the majority for their leadership on ethics and earmarks. And so, to Mr. Mann's point, I am open to new ideas about how we create greater transparency and greater accountability.

I am just really struggling with this grassroots provision, to be candid, and that has to do with my concern about the chilling effect.

And I guess I would like to direct my questions, maybe first to Mr. Mann, and to the extent that—the panel, Mr. Gross, and Mr. Smith in particular.

My question is, it seems to me that what has been talked about here—the dollar threshold or the rest—all of this activates, if, in fact—not if grassroots lobbying goes on to generate context to Congress, but if someone is hired to help do that.

It does seem to me that I am perfectly free, if I was a private citizen, to go out and encourage people to write my congressman. But I get into a whole range of disclosures if I hire somebody who actually knows how to do that. So as long as I am kind of learning on my own how to do it and encouraging people, as opposed to hiring someone who professionally knows how to do it, that I am okay, under some of what has been discussed.

And I hold the view Common Cause is a storied organization. Might be startled to know when I first ran for Congress 15 years ago, I refused PAC money. I was the first Republican to do that. I have gotten over that. But Common Cause was harshly critical of me, even though I was advocating something they promoted at the time. But that was okay. My veteran father said, "I can disagree with everything you say. But I will fight to the death for your right to say it."

So my question to the panel is is there any concern about a chilling effect? Would this encourage or discourage a diversity of views being expressed to Congress by the American people, if we essentially create a new hurdle, when people who are good at what they do, who are professional at what they do are engaged in assisting?

I am beginning with you, Mr. Mann.

Mr. MANN. Mr. Pence, I think that is very well-stated. I mean, that is the issue. And the key here is in adding any new disclosure provision that you don't have that chilling effect, that you don't discourage speech.

My personal view is the more speech the better. That is why I am not in a related area, campaign finance. I am not in the business of eliminating money, reducing money. But I do believe, in the old days, if you will, one segment of the reform community said, "Let's deregulate and disclose." Now, they are moving to deregulate and don't disclose.

My view in this area is that you need to craft this provision in which no individual who hires professional help is going to have any reporting requirements at all. That is, you have to set this up so that what you are getting at is major or major paid communication campaigns to influence the general public to lobby Congress on a particular piece of legislation. And the only reporting requirement is from the firm that is taking in, say, $100,000 a quarter or more from a particular client.

If you set the limits in that way, you are not going to touch any of the legitimate areas of concern that Mr. Franks and that Professor Smith have discussed, in my view.

Mr. NADLER. Time has expired, but I see Mr. Gross——

Mr. PENCE. Thank you, Chairman.

Mr. GROSS. I don't think it is that far of a leap from what we are already requiring for direct lobbyists, that type of disclosure. And 31 States, based on the last survey that I did of States, actually has some form of grassroots disclosure right now.

Mr. NADLER. Thank you. Does anybody else want to comment on that particular point?

If not, the gentleman from Alabama?

Mr. DAVIS. Thank you, Mr. Chairman.

I know one of the purposes of this hearing is not so much to wade into the details of the legislation, but with four of you to talk about some of the theoretical underpinnings.

Let me make two observations.

I certainly take the concerns of my friend from Indiana, and I take the concerns, I take it, Professor Smith, that you have raised, but I don't understand the constitutional argument. I don't understand the argument that there is somehow a constitutional impediment on speech if we curtail lobbying activity in terms of more disclosures, in terms of more information being provided to the general public, for a very simple reason.

The class of people or the class of entities who choose to lobby Congress or who choose to lobby Federal agencies is a self-selected group of folks. They decide to engage in a particular calling, that of lobbying. It is their right to do that.

But it seems to me that the institution that is being the subject or the target of that speech, if you will, can put certain reasonable restrictions on time, place, or manner, can put certain reasonable restrictions on how that speech is received, how it is parceled out, and how it is disclosed. And without boring everybody here with 100 hypotheticals, that is a fairly bed-of-rock constitutional principle.

So I don't understand the force of the argument that somehow we are curtailing the ability of individuals to engage in speech, because we limit how and when they can do it and who they have to tell about it.

The second point that I want to make, again, going back to the broad atmospherics here. It is important. The status quo that we have is under attack. I agree with that. And there is a good reason it is under attack.

Right now, I don't think anybody in this room disputes the obvious. Certain entities and certain individuals have more sway over this institution than others, and it is almost always a matter of resources and ability to mobilize. And, by the way, last time I checked, ability to mobilize is tied, first and foremost, to resources.

All of us who have set in this institution the last several years have seen riders added to appropriation bills. We have seen votes on suspensions.

Number one, several years ago, we were having a vote on something fairly innocuous involving whether foreign companies could sell parts to China that they could use as part of their missile program. And the thing was about to pass overwhelmingly, and Boeing discovered that it might somehow restrict some of their sales in some way, shape or form. And 130 Members of the House went down to the well to change their vote on a suspension bill.

Now, whether that was a meritorious decision or not, I don't think anybody can cite an example of a bill being on the floor and 130 Members going down to change their vote, because they discovered, all of a sudden, maybe this cuts the S-CHIP program more than we would like, or, "Gee, maybe this affects funding for Medicaid in my State." I have never seen 130 Members change their vote over that kind of thing.

There is a reason for that world. There is a concentration of power and resources on one side.

So I agree with some of the observations that have been made that some of this bill may sweep a little bit further than necessary. But there, frankly, may be a good reason that we have to do that, because the system now is so weighted and so imbalanced in one particular direction. So we may have to err on the side of regulation and disclosure to correct that imbalance.

Any responses to any of those observations?

Mr. SMITH. As the one who has made the constitutional argument here on the panel, I guess I feel it is appropriate to respond, Mr. Davis.

I would go back to the question of what is the harm that you are attempting to address? Where is the harm in citizens hearing about issues, even if it is from a paid campaign? Why is that harmful to them?

Now, the only thing I have heard from harm is Ms. Dufendach, who has said several times, "Well, we just have to know."

Mr. Mann keeps saying we have to know, but he doesn't even say why.

Ms. Dufendach says, "Because, otherwise, we can't judge the ____"

Mr. DAVIS. Isn't the harm the imbalance, Professor Smith?

Mr. SMITH. Well, but here is where I want to get directly into your question, the imbalance is not something—the Supreme Court has rejected the notion that you can regulate speech of citizens in order to try to create equality.

Furthermore, in *Buckley v. Valeo,* the Supreme Court rejected the notion that restrictions on money spending for speech can be viewed as time, place and manner restrictions, because they are aimed directly at the speech, not at the time, place and manner.

And the court has consistently upheld the right of citizens to engage in anonymous speech. It has recognized only one constitutionally justifiable reason, and that is preventing quid pro quo corruption, and that corruption is not present where you are being contacted by voters——

Mr. DAVIS. Hasn't the court said recently, in the Missouri case a few years ago, that the appearance of quid pro quo is also a constitutionally recognizable——

Mr. SMITH. Certainly, the appearance—yes, that is correct.

Mr. DAVIS. And isn't all of this consistent with that Missouri ruling? Isn't it all aimed at appearance?

Mr. SMITH. I would say absolutely not because it still has to be the appearance of quid pro quo corruption. And, like I say, the one thing I don't——

Mr. DAVIS. Wasn't that interpreted broadly in the Missouri case? That case dealt with campaign contribution.

Mr. SMITH. Well, but that is campaign contributions directly to candidates. And the view was that even though you were probably not corrupted when somebody gave you a $1,000 contribution——

Mr. DAVIS. Right.

Mr. SMITH [continuing]. Somebody might think you were.

Mr. DAVIS. Right.

Mr. SMITH. But it dealt with specifically with contributions to your campaign.

Mr. DAVIS. Doesn't the logic extend past contributions?

Mr. SMITH. No, it does not, because, in that case, you have a citizen who contacts your office. Are you corrupted when one of your constituents contacts your office? I don't believe you are.

Mr. NADLER. The gentleman's time has expired.

The gentleman from California?

Mr. ISSA. Thank you, Mr. Chairman.

Professor Smith, I do want to follow up a little bit.

First of all, my understanding is the Supreme Court held that privacy was a right. You know, we often argue over abortion up here on the dais, but isn't—just go through, sort of, an analysis.

Isn't your ability to have a private vote, to go into a voting booth, although it is not as explicitly said in the Constitution, isn't there a general belief that you should have the privacy of the voting booth, that no one should know how you voted?

Mr. SMITH. Well, I think at least most people would agree with that, yes.

Mr. ISSA. Okay. Isn't it, every single place in the United States, if you vote for one of us up on the dais, you vote privately, that it is not open to the public in any way, shape or form?

Mr. SMITH. I believe that is true.

Mr. ISSA. Other than the tally. Okay. Well, following through on this, if, in fact, you have a private right of communication, then that private right of communication is abridged by this reporting.

And we are talking about you didn't give a contribution. We already regulate contributions, but just the ability to communicate privately is abridged, by definition, if we tax it with these procedures.

Mr. SMITH. I think that is correct.

Mr. ISSA. Okay. Following the same line, though, we overtly, as a country, decided that poll taxes were wrong, didn't we?

Mr. SMITH. Yes.

Mr. ISSA. And that is a tax on or fee on executing your constitutional right, right?

Mr. SMITH. Correct.

Mr. ISSA. So if an individual or group of individuals want to exercise their constitutional right related to voting, we have asserted, constitutionally and through numerous court action, that you have a right to do these rights privately, and that you are not to be taxed or charged a fee unduly on them.

SMITH; Well, I think that is correct. And I think it goes as well to the chilling effect that has been brought up by Mr. Pence and by the Ranking Member and that has been recognized by the court repeatedly.

There is a chilling effect. The court has recognized it over and over. And I go back to it doesn't really matter why. As Justice Stephens said in *McIntyre,* he said, "The decision to favor anonymity may be motivated by fear of economic or official retaliation, by concern about ostracism or merely by a desire to preserve as much of one's privacy as possible." I think that is exactly right.

Mr. ISSA. Now, I am a Californian, and there is a kind of an interesting thing in California. When you go to vote in California, we can't ask you for a driver's license or other proof of who you are. Did you know that?

Mr. SMITH. I was not specifically aware, I guess, of where we stood in California.

Mr. ISSA. Well, it is something that I have long wanted to change. This Committee has worked on trying to get reforms that would require that if you want to vote, you prove you have a right to vote. And the folks that are not presently on the other side of the aisle, but when they are present on the other side of the aisle, have pushed back on that. And one of the reasons is because that if we had the audacity to demand that you prove you have a right to vote that we would be pushing you away from the voting booth.

Isn't reporting by grassroot groups, both a tax and an elimination of anonymity? And wouldn't it, at a minimum, have—and I think you have already quoted once—a potential chilling effect? And isn't that what we are dealing with here today is that that—that potential exists every bit as much in this legislation as it exists in polling-place observation, polling-place—if you put the Border Patrol at all the voting places in California, et cetera?

Mr. SMITH. If you make it hard for people to hire skilled consultants, because those consultants are afraid they are representing an unpopular cause, and they rely on the good will of folks here in Washington, it very definitely has that effect.

And to elaborate briefly, you mentioned the tax thing, the cost of reporting can be very considerable. Many organizations, not big ones, spend $50,000, $60,000 a year or more——

Mr. ISSA. And last but not least, isn't the most influential group probably in the United States right now MoveOn.org, a 527, backed by hundreds of millions of dollars by just one person who wants to have huge influence, who does so—or at least they are on the top 10?

Mr. SMITH. I will leave it as your characterization. They have been a very influential group and were started——

Mr. ISSA. Right.

And last but not least, this legislation, wouldn't it also impact groups like EMILY's List? Because this, in fact, talks about bundling. If we are going to get into bundling, then wouldn't we envision that EMILY's List would be restricted to one contribution and not dozens and dozens only given to pro-abortion Democrat women?

Mr. SMITH. Well, I don't know exactly enough of how EMILY's List works, but bundling can affect a lot of people. And it points up that this is not, as some have tried to make it, sort of a partisan issue. You have got the ACLU and a wide variety of groups on both sides of the spectrum are concerned about this.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. NADLER. We have no more Democratic Members who wish to ask questions, so that the Ranking Member's fears were misplaced.

We will be able, with one more Republican asking questions, to finish in time to get to the vote. So I recognize the gentleman from Ohio.

Mr. JORDAN. I appreciate there seems to be consensus developing on the definitions and the vagueness there, at least I heard from a couple of the panel. Appreciate that. And it certainly seems to be something that the Committee can work on.

I want to just go back to the principle that—relative to the grassroots lobbying issue that Professor Smith has brought out, just this fundamental idea that citizens contact their Government and why that is a good thing.

I mean, my guess is all the members of the panel and probably every Member of Congress is like our office. I have just been in office 2 months, but one of the things we take great pride in is how we respond back to the constituents who get a hold of us. So I actually do something each evening, because I can't get home to my family. We are here all week, and family is back in Ohio.

I take 10 or 12 people who have contacted our office that day and call them back. And it is amazing how many times that—you know, the first one, I say, "This is Congressman Jordan calling," that they will say, "Really?" I mean, it is just amazing that they are talking to—you know—the guy that they may have voted for, but who at least represents them.

So I guess I come back to this concept. Professor Smith has probably said it best. What is wrong with some organization, some entity motivating citizens to contact their representative?

And to call it Astroturf, to call it artificial, to call it illegitimate doesn't make sense. It seems that is a good thing.

In fact, I think the Chair, if I wrote his statement down correctly in his—or in his opening statement, talked about a private citizen without a PAC should get as much attention as a lobbyist with one. And this would seem to help that citizen have a better chance of talking to their representative, the representative responding back to them.

So, again, just walk me through—and we have had—I looked at the testimony. I think Mr. Gross had talked about the concerns over the now-deleted provisions have been generally overstated. We have got that kind of general statement versus what Mr. Smith has said, that it is a chilling effect, that it is unconstitutional, that it is a terrible concept to pursue.

Just elaborate a little bit more, if you could.

Mr. GROSS. Well, I think the road we are going down here is that there is something unholy or improper about a hired gun in a lobbying process, or at least there is some chilling effect if you hire somebody to lobby. And, now, we are even talking about maybe direct lobbying.

You know, all we are talking about here is disclosure. It is true that disclosure—I mean, you have the right to address your Government. It is a first amendment-protected right. The disclosure of that, whether it is direct lobbying or indirect lobbying, is a minimal intrusion on that right.

So the question is is it a justifiable intrusion? And—go ahead.

Mr. JORDAN. Right. It certainly is. I mean, I think about our campaign account. We have a lawyer, who is a CPA, who is—He asks me—I mean, down the line—and it is still tough to get everything right to comply with campaign finance.

Now, we are talking about the influence it is going to have on citizens or groups who may spend whatever the threshold amount winds up being. That certainly is a chilling effect.

Mr. GROSS. There is——

Mr. JORDAN [continuing]. For someone who hires, we hire a good person to do our stuff, because we want to get it right.

Mr. GROSS. And even requiring direct lobbying, which no one, I think, is disputing, the disclosure of direct lobbying is an intrusion as well. If you go out and hire a lobby firm and you gotta keep track of this and report it on your LDA form every quarter, there is an intrusion there as well.

The court has said if there are large amounts of money spent to influence the process—campaign finance is one thing. That you can actually limit. But if it is a large amount of money to influence the process, and it is not interfering with associational rights, that that disclosure of the dollars spent on that is a minimal intrusion against the possible corrosive effect that undue amounts of money can have on the process, whether it is direct or indirect. That is the constitutional underpinning for the disclosure of any of this, which is an infringement. No question about it.

I don't know how else to address it, except that I think if you narrowly draw that extension, just by hiring, just by requiring disclosure of a hired gun in certain situations is not an overwhelming, chilling effect for direct or indirect lobbying.

Mr. SMITH. Mr. Jordan, if I could briefly comment——

Mr. GROSS. In fact, it is——

Mr. SMITH [continuing]. I would say that one of the things that has been overlooked, too, is there is an effort to do this through members, and say, "Well, we will exempt membership organizations."

In addition to the Chair's comment, why should you be limited if you don't have a PAC, why, if you haven't had the foresight to form a big membership organization 10 years in the past, should you now be limited in your ability——

Mr. JORDAN. Right. Good point.

Mr. SMITH [continuing]. To speak to the American people.

Mr. MANN. The court has upheld disclosure in campaign finance. The Lobbying Disclosure Act is not, as far as I know, under challenge. Constitutionally, this is a fairly minor addition to it. All of the disclosure responsibility is not with individuals——

Mr. NADLER. Thank you. Thank you.

Mr. MANN [continuing]. With others.

Mr. NADLER. Thank you.

The gentleman's time has expired.

We have less than 5 minutes on a vote.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond as promptly as you can, so that their answers may be made part of the record.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

Without objection, I thank the Members of the panel. I thank the witnesses. I thank the Members of the Committee.

With that, the hearing is adjourned.

[Whereupon, at 11:37 a.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

WASHINGTON
LEGISLATIVE OFFICE

January 17, 2007

SUPPORT BENNETT AMENDMENT S.A. 20 TO S.1 "THE LEGISLATIVE TRANSPARENCY AND ACCOUNTABILITY ACT OF 2007"

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F/202.546.0738
WWW.ACLU.ORG

Caroline Fredrickson
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
NADINE STROSSEN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

KENNETH B. CLARK
CHAIR, NATIONAL
ADVISORY COUNCIL

RICHARD ZACKS
TREASURER

On behalf of the ACLU, a non-partisan organization with hundreds of thousands of activists and members, and 53 affiliates nation-wide, we urge you to support Bennett Amendment S.A. 20 to S. 1, the "Legislative Transparency and Accountability Act of 2007" when it comes to the floor for a vote. This amendment would strike Section 220 of the underlying bill.

Section 220, entitled "Disclosure of Paid Efforts to Stimulate Grassroots Lobbying" imposes onerous reporting requirements that will chill constitutionally protected activity. Advocacy organizations large and small would now find their communications to the general public about policy matters redefined as lobbying and therefore subject to registration and quarterly reporting. Failure to register and report could have severe civil and potentially criminal sanctions. Section 220 would apply to even small, state grassroots organizations with no lobbying presence in Washington. When faced with burdensome registration and reporting requirements, some of these organizations may well decide that silence is the best option.

The right to petition the government is "one of the most precious of the liberties safeguarded by the Bill of Rights."[1] When viewed through this prism, the thrust of the grassroots lobbying regulation is at best misguided, and at worst would seriously undermine the basic freedom that is the cornerstone of our system of government.

It is well settled that lobbying, which embodies the separate and distinct political freedoms of petitioning, speech, and assembly, enjoys the highest constitutional protection.[2] Petitioning the government is "core political speech," for which First Amendment protection is "at its zenith."[3]

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[1] *United Mineworkers Union v. Illinois State Bar Association*, 389 U.S. 217, 222 (1967).

[2] *Buckley, supra.* at 45 (1976).

[3] *Meyer v. Grant*, 486 U.S. 414, 425 (1988).

Constitutional protection of lobbying is not in the least diminished by the fact that it may be performed for others for a fee.[4] Further, "the First Amendment protects [the] right not only to advocate [one's] cause but also to select what [one] believe[s] to be the most effective means of doing so."[5] In *Meyer*, the Court emphasized that legislative restrictions on political advocacy or advocacy of the passage or defeat of legislation are "wholly at odds with the guarantees of the First Amendment."[6]

Where the government seeks to regulate such First Amendment protected activity, the regulations must survive exacting scrutiny.[7] To satisfy strict scrutiny, the government must establish: (a) a compelling governmental interest sufficient to override the burden on individual rights; (b) a substantial correlation between the regulation and the furtherance of that interest; and (c) that the least drastic means to achieve its goal have been employed.[8]

A compelling governmental interest cannot be established on the basis of conjecture. There must be a factual record to sustain the government's assertion that burdens on fundamental rights are warranted. Here, there is little if any record to support the contention that grassroots lobbying needs to be regulated. Without this record, the government will be unable to sustain its assertion that grassroots lobbying should be regulated.

The grassroots lobbying provision is troubling for other reasons as well. First, the provision seems to assume Americans can be easily manipulated by advocacy organizations to take actions that do not reflect their own interests. To the contrary, Americans are highly independent and capable of making their own judgment. Whether or not they were informed of an issue through a grassroots campaign is irrelevant--their action in contacting their representative is based on their own belief in the importance of matters before Congress.

Second, it appears groups such as the ACLU may end up having to report their activities because of the grassroots lobbying provisions. A "grassroots lobbying firm" means a person or entity that is retained by one or more clients to engage in paid efforts to stimulate grassroots lobbying on behalf of

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[4] *Riley, supra.* at 801 (1988).

[5] *Meyer v. Grant, supra.* at 424.

[6] *Id.* at 428.

[7] *Buckley, supra.* at 64.

[8] *Id.* at 68.

such clients and receives income of, or spends or agrees to spend, an aggregate of $25,000 or more for such efforts in any quarterly period. "Client" under existing law includes the organization that employs an in-house staff person or person who lobbies. If, for example, the ACLU hires an individual to stimulate grassroots lobbying on behalf of the ACLU and pays that individual for her efforts in amounts exceeding $25,000, it appears that individual could be considered a grassroots lobbying firm, and have to register and report as such. The fact the ACLU employs that individual appears to be irrelevant to this provision. Unless this is the type of activity that the provision is intended to reach, there is no substantial correlation between the regulation and the furtherance of the government's alleged interest in regulating that activity.

Groups such as the ACLU could also be affected because of the definitions of "paid efforts to stimulate grassroots lobbying" employed in Section 220. For example, the ACLU maintains a list of activists who have signed up to be notified about pending issues in Congress. Not all of those activists are "dues paying" members who would be exempt from consideration for "paid efforts to stimulate grassroots lobbying." Additionally, since there are 500 or more such individuals, sending out an action alert to ACLU activists could be deemed "paid" communication and subject to registration and quarterly reporting.

Because the grassroots lobbying provision is unsupported by any record of corruption, and because the provision is not narrowly tailored to achieve the government's asserted interest, the provision is constitutionally suspect. Requiring groups or individuals to report First Amendment activity to the government is antithetical to the values enshrined in our Constitution. If our government is truly one "of the people, for the people, and by the people," then the people must be able to disseminate information, contact their representatives, and encourage others to do so as well.

Sincerely,

Caroline Fredrickson
Director, Washington Legislative Office

Marvin Johnson
Legislative Counsel

OPPOSE EFFORTS TO REGULATE GRASSROOTS LOBBYING

Dear Member of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties:

The undersigned organizations urge you to reject efforts to regulate paid attempts to stimulate grassroots lobbying. The Senate wisely rejected such an effort, and we urge you to do likewise. In a representative democracy, citizens not only have the inviolable right but also should be encouraged to contact their elected representatives. Erecting reporting barriers, particularly when coupled with civil and criminal penalties for failure to report, raises the stakes for inadvertent compliance failure and discourages such communication.

Placing any reporting requirements on efforts to communicate with the general public and thereby "stimulate grassroots activity" would seriously undermine the basic premise of our system of government. The rights of the grassroots, who are "citizen-critics of government," encompass the separate and distinct political freedoms of petitioning, speech, the press (publishing), assembly and even the free exercise of religion. All are highly prized and protected under the First Amendment for all citizens. Indeed, not only would the legislation violate all five individual First Amendment rights stated above, but would harm the very essence and purpose of the First Amendment – the right of the people to express ideas among themselves, and to collectively express their will to their elected representatives.

Imposing any reporting requirements would chill these rights, particularly for smaller and unpopular organizations, but regardless of size, citizen groups are entitled to freely speak to the public on policy concerns. Coupling these reporting requirements with criminal penalties for compliance failure makes it even more likely that organizations of all sizes will forego this activity rather than risk sanctions for noncompliance. Additionally, groups that are disfavored are less likely to wish to be identified in a public report as funding efforts on a specific policy position for fear of reprisal by both the government and citizens in the majority.

Proponents of regulation argue that something needs to be done to regulate so-called "Astroturf" lobbying. We do not necessarily agree that such communications need to be regulated, and we have yet to see an adequate definition of "Astroturf lobbying" that does not infringe on what *everyone* agrees is entirely legitimate and fully protected activity. Neither the size nor form of an organization nor that of its efforts to inform or motivate citizens make its public communications dangerous in a democracy. The First Amendment protects the right of citizens on their own or collectively through their associations to express their will or discontent to Congress. Required reporting of the members, their agents or even funders behind such efforts eliminates or reduces no real threat, but instead creates a barrier to the free and open expression of ideas that is the hallmark of a democracy.

The burden of proof that some harm is being targeted, rather than core political speech, lies with the proponents of the grassroots legislation. There is no factual record to sustain

the assertion that these burdens on fundamental rights are warranted or that paid efforts to stimulate grassroots lobbying needs to be regulated. These efforts wrongly assume that constituents who contact their representatives are not doing so "voluntarily" if someone seeking to stimulate grassroots lobbying has first contacted them. In fact, *how* the individual learned of the issue that motivated him to contact his representative is irrelevant. The *action* taken by that individual in making contact is based on the individual's own belief in the importance of the matter.

A grassroots lobbying provision would not be based upon a record demonstrating illegal or unethical conduct. To the contrary, proposals thus far cover a vast range of legitimate, constitutionally protected activities by individuals and groups that merely seek to inform their fellow citizens and encourage them to make their voices heard on important public issues. Given the impact on fundamental constitutional rights, the House should not use this opportunity to suppress the people's voices and their right to voice their opinions to their elected representatives. We therefore urge you to reject any efforts to regulate grassroots lobbying.

Sincerely,

American Association of Christian Schools
American Center for Law and Justice
American Civil Liberties Union
Center for Individual Freedom
Concerned Women for America
Council for Citizens Against Government Waste
Eagle Forum
Free Speech Coalition, Inc.
GrassrootsFreedom.com
Home School Legal Defense Association
National Religious Broadcasters
National Rifle Association
National Right to Life Committee
National Taxpayers Union
RenewAmerica
RightMarch.com
The American Conservative Union
Traditional Values Coalition

WASHINGTON
LEGISLATIVE OFFICE

February 28, 2007

The Honorable Jerrold Nadler
Chairman, Subcommittee on the Constitution, Civil Rights, and Civil Liberties
House Judiciary Committee
2334 Rayburn House Office Building
Washington, DC 20515

The Honorable Trent Franks
Ranking Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties
House Judiciary Committee
1237 Longworth House Office Building
Washington, DC 20515

AMERICAN CIVIL LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15TH STREET, NW, 6TH FL
WASHINGTON, DC 20005-2313
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

Caroline Fredrickson
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
NADINE STROSSEN
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KENNETH B. CLARK
CHAIR, NATIONAL
ADVISORY COUNCIL

RICHARD ZACKS
TREASURER

Re: **S.1, "The Legislative Transparency and Accountability Act of 2007"**

Dear Chairman Nadler and Ranking Member Franks:

On behalf of the ACLU, a non-partisan organization with hundreds of thousands of activists and members and 53 affiliates nation-wide, we urge you to reject efforts to expand the post-employment bans contained in S.1, the "Legislative Transparency and Accountability Act of 2007." Section 241 of the bill expands this ban to virtually *any* employee of a House of Congress for one year, and expands the ban on Members and elected officers to two years.

While S.1 does *not* contain any restrictions on "grassroots lobbying" activity, we urge you to reject any attempt to add such regulation during House deliberations. Registration and reporting requirements on such activity does little more than raise barriers between the people and their elected representatives.

Broad Expansion of Post-Employment Bans Infringes the Right to Petition the Government for Redress of Grievances

Section 241 of S.1 dramatically expands post-employment bans, intended to alleviate the "revolving door" problem on Capitol Hill. Members of Congress and elected officers would be prohibited from any sort of lobbying *activity* for two years. S.1, however, expands the post-employment ban to include *any* employee of a House of Congress for one year. Thus, a clerk or paid intern, runner, mail-room clerk or any other employee that is not engaged in a significant way in legislation would be prohibited from any lobbying contacts

in the entire chamber in which that staff was employed for a period of one year. If a Member leaves government service and takes a trusted secretary with her, that secretary would be prohibited from any sort of lobbying contact for a one-year period.

S. 1's expansion of post-employment bans poses serious First Amendment concerns for both the former staff member who is barred from a form of political speech and also the organization that is barred from using its preferred representative to exercise its right to petition the government. The Supreme Court has consistently required that such restrictions meet the strictest standards, standards this proposal fails to meet. The ACLU believes the current ban is already an infringement on First Amendment rights – expanding the ban to bar former employees from lobbying not only the member or committee for whom they worked but the entire Congress would further violate constitutional rights without advancing the purpose of preventing corruption.

Former congressional staff do not lose their rights as a result of having been employed by the government. The Supreme Court has ruled that lobbying activity is political speech that is at the core of the First Amendment.[1] The protected nature of this activity is not altered by the fact that the speech is on behalf of others for a fee.[2] Additionally, the Court has found that, without specific justification, the Constitution does not tolerate "[t]he loss of First Amendment freedoms, even for minimal periods of time."[3] This restriction must therefore be judged by traditional First Amendment standards, including the requirement that the restriction be narrowly drawn as to not impose limitations greater than those necessary to protect the interest at stake.[4] Congress has failed to demonstrate a need to expand current, more narrowly tailored restrictions.

The First Amendment additionally guarantees the right to petition the government. Banning organizations from hiring former congressional staff to lobby is denying an organization the right to the advocate of its choice and thus stopping the organization and its constituents from effectively exercising the right to petition the government. Expanding current post-employment bans will further inhibit the ability of organizations to have their concerns

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[1] *Buckley v. Valeo*, 424 U.S. 1, 45 (1976).

[2] *Buckley*, *supra* at 16; see also *Riley v. National Federation of the Blind of North Carolina*, 487 U.S.781 (1988).

[3] *National Treasury Employees Union v. United States*, 927 F.2d 1253, 1254 (D.C. Cir. 1991) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

[4] *See Widmar v. Vincent*, 454 U.S. 263 (1983).

heard by the government, while at the same time preventing those most qualified for these positions the right to gainful employment.

There is no doubt that the government has the right to protect itself from improper activities by former government employees. However, this should be done in a way that is mindful of the First Amendment and does not unnecessarily deny the rights of individuals and organizations acting in good faith. There is no evidence that demonstrates a need to expand the current bans on employment of former congressional staff, or Members. Therefore, the American Civil Liberties Union urges you to reject any proposals to broadly expand current post-employment bans.

Reject Efforts to Incorporate Provisions on "Grassroots Lobbying."

The Senate considered a provision (Section 220) in S.1 that would have required registration and reporting of grassroots lobbying activities. The ACLU and others opposed this effort because it only served to erect barriers between the people and their elected representatives. The Senate wisely agreed, and removed the provision from the final bill. We urge you to *not* place such a provision in the bill during consideration by the House.

The right to petition the government is "one of the most precious of the liberties safeguarded by the Bill of Rights."[5] When viewed through this prism, the thrust of the grassroots lobbying regulation is at best misguided, and at worst would seriously undermine the basic freedom that is the cornerstone of our system of government.

It is well settled that lobbying, which embodies the separate and distinct political freedoms of petitioning, speech, and assembly, enjoys the highest constitutional protection.[6] Petitioning the government is "core political speech," for which First Amendment protection is "at its zenith."[7]

Constitutional protection of lobbying is not in the least diminished by the fact that it may be performed for others for a fee.[8] Further, "the First Amendment protects [the] right not only to advocate [one's] cause but also to select what [one] believe[s] to be the most effective means of doing so."[9] In *Meyer*, the Court emphasized that legislative restrictions on political advocacy or

[5] *United Mineworkers Union v. Illinois State Bar Association*, 389 U.S. 217, 222 (1967).

[6] *Buckley, supra.* at 45 (1976).

[7] *Meyer v. Grant*, 486 U.S. 414, 425 (1988).

[8] *Riley, supra.* at 801 (1988).

[9] *Meyer v. Grant*, *supra*. at 424.

advocacy of the passage or defeat of legislation are "wholly at odds with the guarantees of the First Amendment."[10]

Where the government seeks to regulate such First Amendment protected activity, the regulations must survive exacting scrutiny.[11] To satisfy strict scrutiny, the government must establish: (a) a compelling governmental interest sufficient to override the burden on individual rights; (b) a substantial correlation between the regulation and the furtherance of that interest; and (c) that the least drastic means to achieve its goal have been employed.[12]

A compelling governmental interest cannot be established on the basis of conjecture. There must be a factual record to sustain the government's assertion that burdens on fundamental rights are warranted. Here, there is little if any record to support the contention that grassroots lobbying needs to be regulated. Without this record, the government will be unable to sustain its assertion that grassroots lobbying should be regulated.

The grassroots lobbying provision is troubling for other reasons as well. First, the provision seems to assume Americans can be easily manipulated by advocacy organizations to take actions that do not reflect their own interests. To the contrary, Americans are highly independent and capable of making their own judgment. Whether or not they were informed of an issue through a grassroots campaign is irrelevant--their action in contacting their representative is based on their own belief in the importance of matters before Congress.

Requiring groups or individuals to report First Amendment activity to the government is antithetical to the values enshrined in our Constitution. If our government is truly one "of the people, for the people, and by the people," then the people must be able to disseminate information, contact their representatives, and encourage others to do so as well.

Conclusion

The House understandably is concerned about the appearance of impropriety as well as unethical conduct. Care should be taken, however, when legislative action threatens to infringe upon rights essential to our democracy. Responses to recent scandals should not be taken as an opportunity to suppress the people's voices and their right to voice their opinions to their elected representatives. For these reasons, we urge you to reject the expansion of

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[10] *Id.* at 428.

[11] *Buckley*, *supra*. at 64.

[12] *Id.* at 68.

post-employment bans and reject efforts to insert registration and regulation of grassroots lobbying provisions.

Sincerely,

Caroline Fredrickson
Director

Marvin J. Johnson
Legislative Counsel

FOR IMMEDIATE RELEASE:

Contact: Patti Jo Baber
Phone: 703 960-3011
alldc.org@erols.com

American League of Lobbyists Reaffirms Principles For Lobbying Disclosure Changes

March 1, 2007 – Alexandria, Virginia – In response to the House Judiciary Committee hearing on proposals to amend the Lobbying Disclosure Act (LDA), the Board of Directors of the American League of Lobbyists (ALL) has reaffirmed its set of principles regarding LDA changes. ALL supports the concept of sunshine in government but questions whether current law is sufficient, or if LDA enforcement is the real issue.

"Lobbying is a fundamental right guaranteed by our Constitution, and professional lobbyists such as League members perform a vital role in the democracy by helping citizens communicate factual information and in advocating their interests and concerns to public officials," stated Brian Pallasch, President, American League of Lobbyists.

Press reports on misconduct of a few lobbyists have focused congressional attention on lobbying disclosure as a means of correcting problems. ALL's leadership believes the LDA changes being proposed do not address the problems. The full principles can be viewed at http://www.alldc.org/pdf/lda_fiveprinciples.pdf but the basics are as follows:

1. **LDA rules and regulations should apply equally to everyone who lobbies** – The American League of Lobbyists supports a requirement that everyone involved in advocacy-related activities be held to the same standard. Current loopholes exempt various groups – church, state and local government, and certain public relations professionals – from LDA filings. If the goal of LDA reporting is transparency in government, the public deserves a genuine, comprehensive understanding of **all** advocacy related activities.

2. **ALL supports a full review and enforcement of current LDA requirements** – ALL supports a comprehensive review of the LDA and current enforcement. Before Congress imposes new regulations, it should carefully review the current system to determine if and where problems exist. If the LDA is not currently being enforced effectively, then new legislation will not solve the problems.

3. **ALL supports a uniform electronic filing system for both the House and Senate** – Under the current electronic filing system, lobbyists must file two distinctly different LDA forms in the House and Senate. Questions have been raised both about the security of the system and the need for certain data. ALL strongly supports a uniform system for both bodies that is simple, secure and non-intrusive of personal data.

4. **ALL supports full online disclosure of lobbying reports** – The American League of Lobbyists supports full online disclosure of lobbying reports. Making lobbying disclosure reports fully available online will assist in the public understanding of lobbying and its role in the democratic process.

5. **ALL continues to advocate its Code of Ethics for all lobbyists** – The American League of Lobbyists continues to support and advocate a code of ethics for all lobbyists. ALL's code, first written in 1987, is available for use by any lobbyist at http://www.alldc.org/ethicscode.htm.

"The League has strong reservations regarding the language in the Senate legislation that attempts to double report political contributions," commented Pallasch. "The Federal Election Commission created a system for tracking political contributions, which allows the public to view contributions on-line, there is simply no reason to replicate an identical, system for lobbying disclosure."

The American League of Lobbyists remains committed to doing everything it can to promote good government and strengthen public trust in the legislative process. We are prepared to work with Congress as needed on LDA changes, and we are hopeful that our principles will be taken into consideration during this debate. We support full and complete compliance with the LDA requirements as currently written or as may be re-written in the future.

ABOUT THE AMERICAN LEAGUE OF LOBBYISTS: For the past 25 years, the mission of the American League of Lobbyists has been to enhance the development of professionalism, competence and high ethical standards for advocates in the public policy arena; collectively address challenges which affect the first amendment right to "petition the government for redress of grievances," and promote ethical lobbying through the ALL Lobbying Code of Ethics. Membership, which currently stands at over 900, is available to governmental affairs professionals working at the federal, state, or local level.

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ALL
AMERICAN
LEAGUE OF
LOBBYISTS

American League of Lobbyists

Statement for the Record

on

"S. 1, the Senate Approach to Lobbying Reform"

Subcommittee on Constitution, Civil Rights and Civil Liberties
Committee on Judiciary
U.S. House of Representatives

March 1, 2007

www.alldc.org

Testimony of the
AMERICAN LEAGUE OF LOBBYISTS
on
Revisions to the Lobbying Disclosure Act of 1995
Subcommittee on
Committee on Judiciary
U.S. House of Representatives
March 1, 2007

Dear Chairman Nadler and Members of the Subcommittee:

The American League of Lobbyists is pleased to offer this testimony concerning the reform of the Lobbying Disclosure Act of 1995.

For the past 25 years, the mission of the American League of Lobbyists (ALL) has been to enhance the development of professionalism, competence and high ethical standards for advocates in the public policy arena; collectively address challenges which affect the first amendment right to "petition the government for redress of grievances," and promote ethical lobbying through the ALL Lobbying Code of Ethics. Membership, which currently stands at over 900, is available to governmental affairs professionals working at the federal, state, or local level.

Lobbying is Key to Democracy

Lobbying is a fundamental right guaranteed by our Constitution, and professional lobbyists such as ALL's members perform a critically important role in helping citizens communicate factual information and in advocating their interests and concerns to public officials. Regrettably, a widespread misperception exists today about what lobbying involves and what lobbyists do. This misperception is not new, but it has been elevated to an extraordinary level as a result of the criminal activities of a number of individuals over the last few years.

Those activities not only strike at the heart of our democracy. They also have damaged severely the vast majority of lobbying professionals who perform their role in our democracy in an ethical, honest and legitimate manner. Like any profession, we have bad apples and no matter what rules we put in place, there will always be those who choose to break them.

Lobbyists represent the interests of every American, from the small rural towns to the big cities. Virtually everyone in our democracy, whether they are aware of it or not, has had a lobbyist working on their behalf at one time or another, and this activity enjoys the protection of our Constitution. When conducted appropriately lobbying is as American as "Mom and apple pie" to this country.

Our Founding Fathers recognized a legitimate role for the people's participation in our legislative process by conferring a First Amendment right on citizens to petition the government for redress of grievances. Citizens caught up in the demands of day-to-day

living delegate these "petition" duties to professionals and those professionals are known as lobbyists. History has proven that legislators need lobbyists.

Over 7,000 bills were introduced in the 109th Congress. That makes it simply impossible for any member or his or her staff to know, or understand, all the nuances of every bill introduced. This is why the role of a lobbyist is so critical. With so many pieces of legislation and so many different interpretations of any legislative proposal, lobbyists on all sides play a key role by helping members and their staffs weed through it all. The information that lobbyists provide on particular legislation, both for and against, is critical so Members can cast their votes in the best interest of their constituents and the country.

Lobbying is a legitimate and necessary part of our democratic political process. Government decisions affect both people and organizations, and information must be provided in order to produce informed decisions. Public officials cannot make fair and informed decisions without considering information from a broad range of interested parties. All sides of an issue must be explored in order to produce equitable government policies. In a nutshell, this is a vital role we play, as lobbyists.

Effective lobbying is NOT about access or money. It's about forthright, ethical communications on issues that impact the livelihood of legitimate businesses and constituents back home. Its principal elements include research and analysis on legislation or regulatory proposals; monitoring and reporting on developments; attending congressional or regulatory hearings; working with coalitions interested in the same issues; and educating not only government officials but also employees and corporate officers on the implications of various changes.

What most lay people view as lobbying—the actual communication with government officials— represents the smallest portion of a lobbyist's time. A far greater proportion is devoted to those other activities of preparation, information and communication.

Five Principles for Lobbying Reform

In light of the numerous proposals to amend the Lobbying Disclosure Act (LDA), the Board of Directors of the American League of Lobbyists (ALL) has adopted a set of principles regarding LDA changes. ALL supports the concept of sunshine in government but questions whether current law is sufficient, or if, perhaps, LDA enforcement, or lack thereof, is the real issue.

The full principles can be viewed at http://www.alldc.org/pdf/lda_fiveprinciples.pdf but the basics are as follows:

1. **LDA rules and regulations should apply equally to everyone who lobbies** – The American League of Lobbyists supports a requirement that everyone involved in advocacy-related activities be held to the same standard. Current loopholes exempt various groups – church, state and local government, and certain public relations professionals – from LDA filings. If the goal of LDA

reporting is transparency in government, the public deserves a genuine, comprehensive understanding of **all** advocacy related activities.

2. **ALL supports a full review and enforcement of current LDA requirements** – ALL supports a comprehensive review of the LDA and current enforcement. Before Congress imposes new regulations, it should carefully review the current system to determine if and where problems exist. If the LDA is not currently being enforced effectively, then new legislation will not solve the problems.

3. **ALL supports a uniform electronic filing system for both the House and Senate** – Under the current electronic filing system, lobbyists must file two distinctly different LDA forms in the House and Senate. Questions have been raised both about the security of the system and the need for certain data. ALL strongly supports a uniform system for both bodies that is simple, secure and non-intrusive of personal data.

4. **ALL supports full online disclosure of lobbying reports** – The American League of Lobbyists supports full online disclosure of lobbying reports. Making lobbying disclosure reports fully available online will assist in the public understanding of lobbying and its role in the democratic process.

5. **ALL continues to advocate its Code of Ethics for all lobbyists** – The American League of Lobbyists continues to support and advocate a code of ethics for all lobbyists. ALL's code, first written in 1987, is available for use by any lobbyist at http://www.alldc.org/ethicscode.htm.

Taking the Lead on Ethics & Education for 20 Years

The American League of Lobbyists' adopted its Code of Ethics in 1987. This code, which is attached, is a source of great pride for ALL members. It is a voluntary code but one that our members respect and live up to and value for the way it so clearly defines the boundaries of appropriate lobbying. It is a Code that makes our profession stronger and better.

In terms of education and training for the profession, ALL started a new lobbying certificate program a year ago. In that time, the League has held 17 programs educating more than 350 lobbying professionals on a variety of topics including: lobbying ethics, political action committees, grassroots lobbying, avoiding conflicts of interest and House and Senate procedures. The League strongly believes that it is no longer acceptable simply to fill out the appropriate forms and submit them on time in order to call yourself a lobbyist.

As a profession, we have to do better and we will do better. We need standards to guide our profession and the work we do. We believe our new Lobbying Certification Program will begin to set that standard. In addition, our Lobbyist Toolkit provides all lobbyists with valuable information on staying compliant in an ever changing profession.

This training, however, cannot just be for lobbyists. We need to provide regular training for congressional staff as well. ALL is pleased that the S. 1 calls for yearly ethics training for congressional staff.

Finally, if reforms are, in fact, necessary, it is imperative that these reforms do not limit or impair anyone from exercising their guaranteed Constitutional rights of petitioning their government – even by using a lobbyist. Our Founding Fathers believed that the right to petition government was critical to an open democracy. That is just as vital in today's environment as it was over 200 years ago. If reforms are needed, it is important to enact reforms without limiting a person's right to petition their government.

The Legislative Transparency and Accountability Act of 2007 – S. 1
The 110th Congress picked up where the 109th Congress left off with the Senate passing the "Legislative Transparency and Accountability Act of 2007. While the legislation covers a number of areas, ALL's comments will be restricted those provisions that amend the Lobbying Disclosure Act of 1995.

The Senate legislation meets two of the Leagues five principles – **Uniform Electronic Filing** and **Full Online Disclosure**. In an era of more openness, the American League of Lobbyists supports more transparency and urges both the House and Senate to create a uniform filing system that will make more transparency possible. Under the current electronic filing system which is being modified now, lobbyists must file two distinctly different LDA forms. By creating a single uniform filing system Congress will put an end to the most serious criticism levied against Congress and lobbyists – lack of transparency. A uniform system of filing would give the public access to all registered lobbyist filings in real time. This is not available under the current system.

The League supports full online disclosure of lobbying reports. The general public has come to believe that politicians and lobbyists deliberately seek to operate in a furtive and largely covert manner. This perception, whether right or wrong, has contributed in large measure to the antipathy and distrust that exists towards our system of government and those in the lobbying profession. In an effort to try and change this perception, ALL supports full online access to all lobbying disclosure forms.

ALL supports the idea of making available to the general public all current lobbying disclosure forms. By doing so, we believe the public will have a better understanding of the role of the lobbying profession in our system of government and the value it brings to lawmakers and the overall legislative process.

As discussed above, the League supports and is working towards meeting the goals of Sec. 233 regarding self-regulation within the lobbying community.

Sec. 231 of the Senate bill requires the Comptroller General to conduct a yearly audit of the reports filed under the Lobbying Disclosure Act. This type of ongoing review of the efficacy of the Lobbying Disclosure Act is exactly what the League has been calling for since Congress began looking at changes to lobbying disclosure. The League supports

this provision and urges Congress to hold regular oversight hearings on the implementation of the Lobbying Disclosure Act.

The League has strong reservations regarding Sec. 212 regarding the reporting of political contributions. The Federal Election Commission created a system for tracking political contributions, which allows the public to view contributions immediately on-line. There is simply no logical reason to replicate an identical, or similar, system for LDA.

Finally, the League supports the requirement that all those involved in advocacy-related activities be held to the same standard. To achieve more transparency, regulations must be applied across the board to all those involved in advocacy activities of any kind that relates to the federal legislative and political processes. Current loopholes that exempt various groups from filing lobbying disclosure forms should be closed. The current system allows church groups, state and local governments, and public relations professionals to avoid disclosure under the LDA, even though their activities may be identical to professional lobbyists. It is inappropriate for different individuals or organizations to be held to different standards. All those involved in advocacy activities should be required to comply with the standards set by the LDA. If the goal is to give the public a genuine, comprehensive understanding of how our processes work, then they need access to information on *all* advocacy activities, not only those performed by professional lobbyists.

Conclusion

The American League of Lobbyists remains committed to doing everything it can to promote good government and strengthen public trust in the legislative process. We are prepared to work with Congress as needed on LDA changes, and we are hopeful that our principles will be taken into consideration during this debate. We support full and complete compliance with the LDA requirements as currently written or as may be re-written in the future.

We would ask you to work with groups like ALL on any and all reforms to prevent this type of behavior in the future. Our members are harmed by abuse of those individuals who disregard the laws that govern our profession just as much as Congress and the American people. We believe that if we are going to get it right, we must all work together. We owe that to the people who sent us here whether it was voters, association members, unions or corporations.

We welcome the opportunity to work with you and your colleagues on this issue to address the League's five principles for lobbying reform. We look forward to a process by which we will be able to submit the current LDA to a thoughtful and rigorous review and find ways to make it more effective, and more transparent. And we are confident that working together, we will restore our people's faith in government and in the legislative process. We owe them no less. Thank you for the opportunity to include this statement as part of the permanent record.

Appendix: ALL Code of Ethics
Approved by the ALL Board February 28, 2000

The ALL Code of Ethics is utilized as a model by various organizations and serves to strengthen our image and enhance our role as a vital and respected link in the democratic process.

Lobbying is an integral part of our nation's democratic process and is a constitutionally guaranteed right. Government officials are continuously making public policy decisions that affect the vital interests of individuals, corporations, labor organizations, religious groups, charitable institutions and other entities. Public officials need to receive factual information from affected interests and to know such parties' views in order to make informed policy judgments. In exercising their rights to try to influence public policy, interests often choose to employ professional representatives to monitor developments and advocate their positions, or to use lobbyists through their membership in trade associations and other membership organizations. Tens of thousands of men and women now are professional lobbyists and represent virtually every type of interest. With over 4,000 pieces of legislation introduced in the last Congress, members and staff must rely on input from a variety of experts on those issues.

To help preserve and advance public trust and confidence in our democratic institutions and the public policy advocacy process, professional lobbyists have a strong obligation to act always in the highest ethical and moral manner in their dealings with all parties. Lobbyists also have a duty to advance public understanding of the lobbying profession. The American League of Lobbyists, accordingly, has adopted the following "Code of Lobbying Ethics" to provide basic guidelines and standards for lobbyists' conduct. In general, this Code is intended to apply to independent lobbyists who are retained to represent third party clients' interests and to lobbyists employed on the staff of corporations, labor organizations, associations and other entities where their employer is in effect their "client." Lobbyists are strongly urged to comply with this Code and to seek always to practice the highest ethical conduct in their lobbying endeavors. Individual members of American League of Lobbyists affirm their commitment to abide by this code.

ARTICLE I - HONESTY & INTEGRITY

A lobbyist should conduct lobbying activities with honesty and integrity.

1.1. A lobbyist should be truthful in communicating with public officials and with other interested persons and should seek to provide factually correct, current and accurate information.

1.2. If a lobbyist determines that the lobbyist has provided a public official or other interested person with factually inaccurate information of a significant, relevant, and material nature, the lobbyist should promptly provide the factually accurate information to the interested person.

1.3. If a material change in factual information that the lobbyist provided previously to a public official causes the information to become inaccurate and the lobbyist knows the public official may still be relying upon the information, the lobbyist should provide accurate and updated information to the public official.

ARTICLE II - COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS & RULES

A lobbyist should seek to comply fully with all laws, regulations and rules applicable to the lobbyist.

2.1. A lobbyist should be familiar with laws, regulations and rules applicable to the lobbying profession and should not engage in any violation of such laws, regulations and rules.

2.2. A lobbyist should not cause a public official to violate any law, regulation or rule applicable to such public official.

ARTICLE III - PROFESSIONALISM

A lobbyist should conduct lobbying activities in a fair and professional manner.

3.1. A lobbyist should have a basic understanding of the legislative and governmental process and such specialized knowledge as is necessary to represent clients or an employer in a competent, professional manner.

3.2. A lobbyist should maintain the lobbyist's understanding of governmental processes and specialized knowledge through appropriate methods such as continuing study, seminars and similar sessions in order to represent clients or an employer in a competent, professional manner.

3.3. A lobbyist should treat others - both allies and adversaries - with respect and civility.

ARTICLE IV - CONFLICTS OF INTEREST

A lobbyist should not continue or undertake representations that may create conflicts of interest without the informed consent of the client or potential client involved.

4.1. A lobbyist should avoid advocating a position on an issue if the lobbyist is also representing another client on the same issue with a conflicting position.

4.2. If a lobbyist's work for one client on an issue may have a significant adverse impact on another client's interests, the lobbyist should inform and obtain consent from the other client whose interests may be affected of this fact even if the lobbyist is not representing the other client on the same issue.

4.3. A lobbyist should disclose all potential conflicts to the client or prospective client and discuss and resolve the conflict issues promptly.

4.4. A lobbyist should inform the client if any other person is receiving a direct or indirect referral or consulting fee from the lobbyist due to or in connection with the client's work and the amount of such fee or payment.

ARTICLE V - DUE DILIGENCE & BEST EFFORTS

A lobbyist should vigorously and diligently advance and advocate the client's or employer's interests.

5.1. A lobbyist should devote adequate time, attention, and resources to the client's or employer's interests.

5.2. A lobbyist should exercise loyalty to the client's or employer's interests.

5.3. A lobbyist should keep the client or employer informed regarding the work that the lobbyist is undertaking and, to the extent possible, should give the client the opportunity to choose between various options and strategies.

ARTICLE VI - COMPENSATION AND ENGAGEMENT TERMS

An independent lobbyist who is retained by a client should have a written agreement with the client regarding the terms and conditions for the lobbyist's services, including the amount of and basis for compensation.

ARTICLE VII - CONFIDENTIALITY

A lobbyist should maintain appropriate confidentiality of client or employer information.

7.1. A lobbyist should not disclose confidential information without the client's or employer's informed consent.

7.2. A lobbyist should not use confidential client information against the interests of a client or employer or for any purpose not contemplated by the engagement or terms of employment.

ARTICLE VIII - PUBLIC EDUCATION

A lobbyist should seek to ensure better public understanding and appreciation of the nature, legitimacy and necessity of lobbying in our democratic governmental process. This includes the First Amendment right to "petition the government for redress of grievances."

ARTICLE IX - DUTY TO GOVERNMENTAL INSTITUTIONS

In addition to fulfilling duties and responsibilities to the client or employer, a lobbyist should exhibit proper respect for the governmental institutions before which the lobbyist represents and advocates clients' interests.

9.1. A lobbyist should not act in any manner that will undermine public confidence and trust in the democratic governmental process.

9.2. A lobbyist should not act in a manner that shows disrespect for government institutions.

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February 21, 2006, 8:09 a.m.

Let the Grassroots "Lobbying" Grow

Key to cleaning up Washington.

By Bradley A. Smith & Stephen M. Hoersting

Senator Dianne Feinstein recently captured public sentiment when she said that there should "be a wall" between registered lobbyists and the pecuniary interests of members of Congress. The problem is not the technical and professional information that lobbyists provide lawmakers, nor is it information on the opinions of the American people that honorable and ethical lobbyists provide lawmakers everyday. It is the relative voice of the average citizen that Sen. Feinstein wants to strengthen. This is why she and Senate Rules Committee Chairman Trent Lott have proposed bringing sunlight to the earmarking process and other measures that would weaken the link between lobbyist cash and lawmaker policy. Senators Lott and Feinstein are not alone in their concern. There are proposals from others to ban gift bans, restrict payments for travel, revoke floor privileges of former lawmakers, slow the "revolving door," and limit lobbyist donations to charities affiliated with members; each seeks to reduce the direct pecuniary exchange between lawmakers and lobbyists.

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NOT TO DISS DISCLOSURE, BUT… Circulating among the proposals, however, is another recommendation that is oddly out of place, and has little or nothing to do with reducing the coziness between lobbyists and lawmakers. These are the so-called "grassroots lobbying disclosure" proposals, which would require organizations to disclose in detail efforts to "stimulate" issue-oriented advertising aimed at fellow citizens, and, in some cases, to identify donors.

In proposals to disclose grassroots lobbying, we are witnessing two canons of political law on an apparent collision course: that government corruption is cured by disclosure;

and that the right of individuals to speak and associate freely depends upon their ability to do so anonymously. But the conflict is a false one — a byproduct of fuzzy thinking — because each canon, when properly applied, protects citizens from abusive lawmakers. Disclosure of campaign contributions protects citizens from lawmakers who can confer benefits on large contributors (and pain on opponents) through legislation. Disclosure of true lobbying activities, that is, consultants engaged in face-to-face meetings with lawmakers, protects citizens in a similar manner. Because disclosure is beneficial in these contexts, people presume it is always harmless. This is wrong. The right to speak anonymously with fellow citizens about issues or pending legislation also protects citizens by reducing lawmaker ability to visit retribution on those who oppose his policy preferences.

THE GRASSROOTS IS GREENER

Far from being the problem, grassroots lobbying is part of the solution to restoring the people's faith in Congress. Polls show that Americans are fed up with what is increasingly seen as a corrupt Washington way of business. Ninety percent of Americans favor banning lobbyists from giving members of Congress anything of value. Two thirds would ban lobbyists from making campaign contributions. More than half favor making it illegal for lobbyists to organize fundraisers. Seventy-six percent believe that the White House should provide a list of all meetings White House officials have had with lobbyist Jack Abramoff. But there is no evidence whatsoever that the public views grassroots lobbying as a problem.

"Grassroots lobbying" is merely encouragement of average citizens to contact their representatives about issues of public concern. It is not "lobbying" at all, as that phrase is normally used outside the beltway, meaning paid, full-time advocates of special interests meeting in person with members of Congress away from the public eye. What the public wants, as Sen. Feinstein and others have recognized, is to break the direct links between lobbyists and legislators, thus enhancing the voice and influence of ordinary citizens. They do not want restrictions on their own efforts to contact members of Congress, persuade other citizens, or receive information about Congress.

Contact between ordinary citizens and members of Congress, which is what "grassroots lobbying" seeks to bring about, is the antithesis of the "lobbying" at the heart of the Abramoff scandals. It is ordinary citizens expressing themselves. That they are "stimulated" to do so by "grassroots lobbying activities" is irrelevant. These are still individual citizens motivated to express themselves to members of Congress.

Regardless of what lobbying reform is passed, not even the most naïve believe it will mean the end of the inside-the-Beltway lobbyist. Grassroots voices are a critical counterforce to the influence of professional lobbyists. Recently one member of Congress expressed concern that Jack Abramoff's tribal clients were used to contact Christian Coalition members, "to stir up opposition to a gambling bill." But it cannot be denied that the individuals who responded to that grassroots effort were ordinary citizens who were, in fact, opposed to a gambling bill. They are precisely the type of people that Congress ought to hear from. Regardless of how they learned about the issue, they had to make the decision that the issue was important to them, and take the time to call Congress. There is

little to be gained by knowing who is funding the underlying information campaign that has caused these constituents to contact their members. The constituent's views are what they are; the link between lobbyist and Congress is broken by the intercession of the citizen herself.

ENCOURAGING THOSE WHO LIVE FAR FROM K STREET

Disclosure in this situation comes with a price. When the source behind the grassroots campaign is anonymous the opportunity for favoritism or retaliation is gone. Mandatory disclosure reintroduces that link. It is true that many financiers of grassroots lobbying campaigns are happy to be publicly identified — for example, George Soros and Steve Bing make no bones about their efforts to educate the public. Unions, and some trade associations, such as the Health Insurance Association of America (HIAA) in its 1994 ads urging citizens to oppose a national health plan, are more often than not open about their activities. But others prefer anonymity, and there are many reasons for wanting anonymity and for providing its protection.

To use the example of HIAA, under the national health plan proposed by the Clinton administration in 1994, private insurance companies were to have a major role in administering the plan. A company donating funds or talent to HIAA's "Harry and Louise" ad campaign against the plan might sincerely believe that the plan was bad for America, but be prepared to bid to administer the plan had it passed. And if the plan failed to pass, the same company might have wished to avoid possible retaliation from disappointed lawmakers who supported the plan. Such a company might therefore prefer anonymity, to protect it and its lobbyists from retaliation, favoritism, and government pressure. Such protection is what lobbying reform ought to achieve.

Others will have other reasons for anonymity. A prominent Democrat may not want to be identified as having consulted on ads urging citizens to support the nomination of Samuel Alito to the Supreme Court; a prominent Republican consultant may not want to be identified as being on the other side. It is not hard to imagine why the NAACP fought requests to disclose its members in 1950s Alabama, or why the Supreme Court said in response to Alabama's desire to learn those names that "[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action." And while today's proposals for grassroots lobbying disclosure do not require organizations to disclose their members, it is easy to imagine the leverage Alabama could have put on the NAACP, and the resulting damper on the civil rights movement, if 1950s Alabama knew about the NAACP what the twenty-first century Congress proposes to learn about grassroots organizations. What could Alabama, or the general public, have done had it known when the NAACP engaged in preparation, planning, research, or background work; when it coordinated activities with like minded organizations; when it planned to engage fellow citizens with advertising; or knew the names of the consultants that would assist them in the effort? As Justice Stevens stated for the Supreme Court in McIntyre v. Ohio Elections Commission, striking down an Ohio law mandating disclosure of grassroots lobbying, anonymous speech "exemplifies the purpose behind the Bill of Rights and of the First Amendment in particular: to protect unpopular individuals from retaliation — and their ideas from suppression." These are not fanciful

fears. In what many consider a blatant attempt at intimidation, when the Free Enterprise Fund recently ran ads critical of the performance of Texas County Prosecutor Ronnie Earle, Earle subpoenaed the names of the group's donors.

Compelled disclosure of grassroots activity will drive many publicly spirited persons out of future debates altogether, and may make seasoned lobbyists reluctant to assist unpopular causes or causes contrary to the current administration — the whole reason Democrats have chafed about the GOP's "K Street Project." Compelled disclosure thus deprives organizations of the services of talented consultants who make their livings, in part, on Capitol Hill, and has a chilling effect on donors to issues organizations on both sides of the aisle. Indeed, those most likely to withdraw from the field will tend to be those motivated by ideology. Those motivated by pecuniary gain will have an added incentive to bear the cost of disclosure and carry on. This may be a price worth paying when we are discussing disclosure of direct lobbyist contact with lawmakers, but it is not worth paying to limit citizen contact with lawmakers.

To clean up the Abramoff mess there is no reason to smoke out donors to groups like Progress for America or the Alliance for Justice, or to make consultants fearful to assist such organizations with controversial issues. Donations or consulting for grassroots lobbying does not support direct lobbyist-to-lawmaker contact — — the source of public concern. (Nobody cares if a lobbyist flies on a corporate jet — what they object to is his giving rides to congressmen on a corporate jet!). Grassroots lobbying fosters citizen-to-citizen communication, and later, citizen-to-lawmaker communication. The message consists of information for citizens, and an appeal to those citizens to take part in a public discussion. Some will get involved because they agree with the message and share its concern; others because they disagree; and still others will not get involved at all. With even the most effective grassroots lobbying, however, there is always an intervening decision made by an individual citizen. The aggregate of those individual decisions is itself critically important and valuable information to the lawmaker. With the decision to contact lawmakers, from whatever side of the debate, citizens reduce the relative power of lobbyist-to-lawmaker communication, which is precisely the power shift the public wants to see, and is the shift most needed in an era of unlit, undisclosed earmarking and lobbying scandal.

Anonymous grassroots lobbying is a long and honored tradition, engaged in by many great Americans. Alexander Hamilton, James Madison, and John Jay authored the Federalist Papers anonymously. Most of the opposition to ratification of the Constitution was also published anonymously, by such distinguished Americans as Richard Henry Lee, New York governor George Clinton, and New York Supreme Court Justice Robert Yates. Other famous Americans who have engaged in anonymous "grassroots lobbying" include Thomas Jefferson, Abraham Lincoln, Winfield Scott, and Benjamin Rush.

The problem of lobbying abuses is one of lobbyist influence outside the light of scrutiny. It is not a problem of citizen influence. Grassroots lobbying encourages citizens to get involved, and the involvement of citizens breaks the link between lobbyists and

lawmakers. Grassroots lobbying should be encouraged in every way possible, not discouraged, as a way to restore the trust of the American people in Congress.

— Bradley A. Smith, former chairman of the Federal Election Commission, is senior adviser to the Center for Competitive Politics, and professor of law at Capital University Law School in Columbus, Ohio. Stephen M. Hoersting is the executive director of the Center for Competitive Politics and former general counsel to the National Republican Senatorial Committee. The Center for Competitive Politics seeks to educate the public on the benefits of free competition, fairness, and dynamic participation in the political process. Nothing in this editorial should be construed as advocacy for or against any legislation.

* * *

Elitist special-interest groups press Congress to curb "grassroots lobbying," as NRLC fights back

WASHINGTON (February 1, 2007) – A coalition of special-interest groups, funded in large part by liberal foundations, is working with the new Democratic leadership in Congress to enact laws that would restrict what they call "grassroots lobbying" – by which they mean organized efforts to motivate members of the public to communicate with their congressional representatives about pending legislation.

Pro-life and pro-family leaders warn that under the proposed new laws, many genuine grassroots organizations – including state-level pro-life and pro-family organizations – would be saddled with burdensome new registration, record keeping, and reporting requirements.

NRLC and many other grassroots organizations are fighting the proposals. The American Civil Liberties Union (ACLU) is also urging Congress to reject such regulations as infringements on rights protected by the First Amendment.

NRLC and its allies won an initial victory in the U.S. Senate on January 18, when the Senate voted 55-43 to strip provisions to regulate "grassroots lobbying" from an omnibus "ethics reform" bill.

However, pro-regulation groups such as Democracy 21(headed by veteran liberal activist Fred Wertheimer) and OMB Watch (controlled by representatives of labor unions and certain industries) are redoubling their efforts. They are pushing the leaders of the newly installed Democratic House majority to restore "grassroots lobbying" provisions when the House considers "ethics reform" legislation soon.

The House Democratic leadership is expected to unveil its own version of "ethics reform" legislation around mid-February, and most observers expect that restrictions on "grassroots lobbying" will be part of their package.

Senate Fight

In the Senate, the issue came up during debate on an omnibus "ethics reform" bill (S. 1) which, among other things, would enact many new restrictions on gift-giving, meal-buying, and other practices associated with some Washington-based lobbyists. The bill's sponsors say that one of its purposes is to tighten up regulation of lobbyists who work in Washington, D.C., in response to certain lobbying scandals of the past several years, including those associated with Jack Abramoff and his associates.

However, the bill also contained a section (Section 220) dealing with "grassroots lobbying," which the bill defined as "the voluntary efforts of members of the general public to communicate their own views on an issue to Federal officials or to encourage other members of the general public to do the same."

Under Section 220, a group or individual who engaged in "paid efforts to stimulate grassroots lobbying" would have been forced to register with Congress as a federal lobbyist or even as a "grassroots lobbying firm," and to file complicated quarterly reports with Congress. This requirement would have applied, for example, to some paid staff members of state right-to-life organizations, and many other citizen activists across the political spectrum.

Violation of the bill's requirements would be punishable by a civil fine of up to $200,000 per infraction. "Corrupt" violations would also be punishable by up to 10 years in federal prison – with the determination of whether a given violation was considered "corrupt" to be made by a U.S. attorney, a federal political appointee.

(To read NRLC's five-page letter sent to senators on January 16, explaining the far-reaching problems that would be created by such a law, click here.)

In a January 16 legislative alert issued by NRLC to its affiliates, NRLC said that under the bill, "activity that is at the heart of the representative system of government implicitly would be regarded as a suspect activity, subject to complex regulations, coupled with severe penalties for failure to abide by the regulations. If this provision is enacted, many ordinary citizens will get less and less information from pro-life groups and other issue-oriented organizations about what is going on in Congress. Churches and church leaders may also be deterred from speaking to the broader public about important legislative issues. These effects may be among the goals intended by the special-interest groups that are pushing this destructive legislation."

Bennett Amendment

In order to defend the First Amendment rights of citizen groups, pro-life Senator Robert Bennett (R-Utah) offered an amendment to simply strip the entire "grassroots lobbying" section from the bill. The Bennett Amendment was strongly supported by a broad spectrum of advocacy groups, including NRLC, the Family Research Council, the National Rifle Association, the American Center for Law and Justice, the Free Speech Coalition, and the American Civil Liberties Union.

On January 18, the Bennett Amendment was adopted 55-43. Led by Minority Leader Mitch McConnell (R-Ky.), a strong defender of free speech rights, every Republican senator who was present voted for the Bennett Amendment. They were joined by seven Democrats.

(The Senate roll call on the Bennett Amendment appears in the NRLC Senate scorecard for 2007.)

The Bennett Amendment got a boost when it was endorsed by Senator John McCain (R-Az.). McCain, the prime sponsor of a 2002 "campaign reform" law that placed restrictions on some communications to the public about those who hold or seek federal office, had himself sponsored legislation in 2005 that would have regulated "grassroots lobbying." But on January 18, McCain told the Senate that he had concluded that Section 220 "could seriously impact legitimate communications between public interest organizations and their members," and "would negatively impact the legitimate, constitutionally protected activities of small citizen groups and their members."

Pro-regulation Interest Groups

The coalition of liberal "government reform" groups that advocate heavy regulation of political speech lobbied hard against the Bennett Amendment. This coalition includes about nine nonprofit organizations, including Democracy 21, Common Cause, OMB Watch, and Public Citizen.

In communications to the Senate and the news media, these groups argued that the bill was necessary to regulate what they called "Astroturf," a term they have coined to refer to organized efforts to encourage citizens to contact their federal representatives. In a January 17 letter, they defined "Astroturf" lobbying as any "lobbying campaigns [that] involve paid media, phone bank, direct mail and other paid public communication campaigns *to urge the public* to lobby Congress on legislation." [italics in original]

"These groups assert that they are trying to diminish 'special interest' influence, but in reality, they serve as fronts for special interests that are far more elitist, and less accountable, than the grassroots organizations that they are trying to cripple," commented NRLC Legislative Director Douglas Johnson.

Two days after the Senate vote, Bradley Smith, a former chairman of the Federal Election Commission who now serves as chairman of the Center for Competitive Politics, strongly criticized the pro-restriction coalition in an essay posted on the Center's blog (www.campaignfreedom.org/blog), titled "The Real 'Astroturf' Lobbyists."

Smith noted that Democracy 21 "has no members," is headed by a registered lobbyist (Wertheimer), and that "the bulk of Democracy 21's funding comes from the Pew, Carnegie, Joyce and Open Society (George Soros) Foundations, which themselves have no broad membership to whom to be accountable, and which operate with no accountability to the general public . . . . [Yet, they] go around Capitol Hill ridiculing Congress's constituents as 'fake' and 'astroturf' while claiming to speak for 'the American people.'"

Likewise, Mark Fitzgibbons, an attorney associated with the Free Speech Coalition (an umbrella group formed to defend the rights of nonprofit organizations), posted on http://www.grassrootsfreedom.com/ a revealing essay about OMB Watch, a group that has claimed an active role in shaping the "grassroots lobbying" provisions under consideration in Congress:

Fitzgibbons wrote; "OMB Watch is no grassroots organization. . . .OMB Watch appears from its own graphs on its website to get about only one percent of its funding from individual donors . . . and approximately 90 percent from foundations. . . . OMB Watch lists its sources of funds from foundations in this order: 1. Anonymous I, 2. Anonymous II, 3. Bauman Foundation, 4. Beldon Fund, 5. Carnegie Corporation of New York, 6. Ford Foundation, 7. Fund for Constitutional Government, 8. HKH Foundation, 9. Charles Stewart Mott Foundation, 10. Open Society Institute, 11. Pacific Life, 12. Rockefeller Brothers Fund, 13. The Scherman Foundation, and 14. Sunlight Foundation."

Fitzgibbons also noted that the 15-member OMB Watch board is dominated by representatives of big labor unions and a few big corporations, and by veteran liberal activists such as John Podesta, previously a top advisor to President Clinton.

Fitzgibbons concluded: "OMB Watch, both through its sources of funding and the makeup of its own board, represents big corporate and labor union interests, and is nearly as far as one can get in Washington from representing grassroots causes. In fact, OMB Watch is much closer to being 'Astroturf', those artificial, industry created causes that purport to, but don't, represent citizens, than to legitimate nonprofit and other grassroots causes."

NRLC's Douglas Johnson commented, "The current campaign to restrict so-called 'grassroots lobbying' is another attempt by certain well-funded liberal elites to cripple genuine grassroots political movements, such as the pro-life movement, in order to increase their already powerful influence over officeholders. They want to enhance their own form of political influence, which depends heavily on the demonstrated willingness of many elements of the institutional news to relentlessly propagandize on behalf of every so-called 'reform' pushed by these special-interest groups. While the speech-regulation groups claim they want to make Congress less beholden to 'special interests,' in fact they push constantly for laws that would make officeholders more insulated from real constituents and more dependent on liberal elites, including the fat-cat foundation bosses who fund these groups and their allies in the news media."

What Next?

Johnson warned, "Despite the favorable vote in the Senate, a great deal of work needs to be done to persuade House members to also reject this attack on grassroots activism – and it needs to be done quickly. The House might vote on the issue before the end of February."

The pro-regulation lobby seemed to regard the Senate's adoption of the Bennett Amendment as an unexpected but temporary setback.

Craig Holman, a lobbyist for Public Citizen, told *National Journal*, "They succeeded narrowly in getting it [grassroots provision] removed in the Senate, but we are going to get it back in the House."

Take Action Now

For guidance on how to contact the office of your representative in the U.S. House of Representatives, in order to urge him or her to vote against restrictions on "grassroots lobbying," visit the NRLC Legislative Action Center at http://www.capwiz.com/nrlc/home/ and follow the instructions there.

To see more documents about congressional attempts to restrict "grassroots lobbying," go to www.nrlc.org/FreeSpeech/index.html

MEMORANDUM

TO: **Jay Sekulow, Colby May, and Drew Ryun**

FROM: **Erik Zimmerman, Matthew R. Clark, Drew Ashby, Jonathan Shumate, Janelle Smith, and Ben Sisney**

RE: **Executive Summary of How the Grassroots Lobbying Bills (H.R. 4682 and S.1) Would Affect Churches and Other Non-Profit Organizations**

DATE: **January 11, 2007**

By greatly expanding the scope of lobbying regulation, the grassroots lobbying bills (H.R. 4682[1] and S.1) would affect many churches, pastors, denominations, public interest organizations, law firms, radio and TV personalities, civic organizations, nonprofit and for-profit organizations, the media, and private individuals that voluntarily choose to pay for any medium to distribute their message to the general public.

Amendment 20 to S.1—proposed by Senator Bennett on January 10, 2007, and co-sponsored by Senator McConnell—would eliminate the provisions of the Senate bill dealing with "grassroots lobbying firms" and *ensure that churches and many other public interest organizations and individuals would not be subject to lobbying regulations.*

Existing law—namely, the Lobbying Disclosure Act of 1995[2]—imposes registration and reporting requirements upon "lobbyists" and "lobbying firms," *i.e.*, those who are paid to contact public officials on behalf of a client.[3] The grassroots lobbying bills would greatly expand the coverage of the Act to include a *new* class of lobbyist, "*grassroots lobbying firms*," which are

[1] H.R. 4682 was proposed in the 109th Congress and a similar bill is expected to be introduced in the immediate future.
[2] The Lobbying Act is found at 2 U.S.C. §§ 1601 *et. seq.*
[3] Lobbying Act § 3(9), (10).

individuals and organizations that spend a certain amount of money trying to stimulate "grassroots lobbying" (i.e., encouraging people to contact public officials).[4]

Many churches (especially larger ones), denominations, public interest organizations and other groups and individuals that encourage members of the public to get involved with federal legal issues would be classified as "grassroots lobbying firms" under these bills.[5] These groups and individuals would be required to register with Congress and make certain initial and quarterly disclosures about their activities that would be made available to the public on an easily searchable government website.[6] The bills also include financial and criminal penalties for failure to comply with the registration and reporting requirements.[7]

The House and Senate bills are similar in many respects, although there are several key differences. Under the House bill, a church or other organization would be considered a "grassroots lobbying firm"—subject to registration and reporting requirements—if:

- the group attempted to "*influence* the general public" (or segments thereof) to "voluntarily" contact federal officials in order to express their own views on a federal legal issue, or to encourage other people to contact federal officials;
- the communication was directed at least one person that was not a member, shareholder, or employee of the group; and
- the group receives income of, spends, or agrees to spend an aggregate of $50,000 or more for such efforts in any quarterly period.[8]

For example, if a church or denomination spent $50,000 of its resources within one quarter (three month period) to encourage people to support the Federal Marriage Amendment or support the confirmation of a federal judicial nominee, that church or denomination would be classified as a "grassroots lobbying firm" under H.R. 4682.

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[4] S.1 § 220(a)(2)(18), (19), and H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(18)-(20).
[5] *See id.*
[6] *See, e.g.*, H.R. 4682 §§ 202, 204, 205, 207, and S.B. 1 §§ 211, 212, 217, 220, amending Lobbying Act §§ 3-6.
[7] S.B. 1 §§ 216, 223, and H.R. 4682 § 402, amending Lobbying Act § 7.
[8] H.R. 4682 § 204(a)(2), amending Lobbying Act §§ 3(19), (20).

Under the Senate bill, a church or other organization would become a "grassroots lobbying firm" if:

- the group attempted to "*influence* the general public" (or segments thereof) to contact federal officials to urge them to take specific action on a federal legal issue;
- the communication was "directed at" at least 500 members of the general public;
- at least one person that the communication was directed at was not a member, employee, shareholder, officer, director, or donor of a non-nominal amount of money or time to the group;
- the communication had the effect of supporting some group or individual's "lobbying contact" on that issue (a direct communication to a federal official about a legal issue, made on behalf of a client, that is not exempted from the definition of "lobbying contact"); and
- the group received, spent, or agreed to spend $25,000 or more for such efforts in any quarterly period.[9]

For example, if a church received or spent an aggregate of $25,000 on salaries, materials, advertisements, etc. within a 3 month period to encourage people to support the Federal Marriage Amendment or support the confirmation of a federal judicial nominee, and the church's message reached over 500 people including some that are not members or donors of the church, the church would be considered a "grassroots lobbying firm" under S.1.

Under either bill, many churches and other "grassroots lobbying firms" would have to register with Congress and comply with onerous quarterly reporting requirements or face possible fines and criminal penalties. There are numerous differences between the bills, however:

- the House bill's definition of "paid efforts to stimulate grassroots lobbying" is broader than the Senate bill's because it is not limited to actions in support of "lobbying contacts," so more churches and other organizations would likely become "grassroots lobbying firms" under the House bill than under the Senate bill;[10]
- the House bill has a $50,000 threshold within a quarter to become a "grassroots lobbying firm," while the Senate bill's quarterly threshold is just $25,000;[11]

[9] S.1 § 220(a)(2)(18), (19), amending Lobbying Act § 3.
[10] *Compare* S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3, *with* H.R. 4682 § 204(a)(2), amending Lobbying Act § 3.
[11] *Compare* S.1 § 220(a)(2)(18), (19), amending Lobbying Act § 3, *with* H.R. 4682 § 204(a)(2), amending Lobbying Act § 3.

- the Senate bill provides that "paid efforts to stimulate grassroots lobbying" does not cover an attempt to influence people to contact federal officials "directed at less than 500 members of the general public," but the House bill does not have a similar provision;[12]
- the Senate bill's exception for communications made to members, employees, officers or shareholders of an organization is broader than the House bill's exception, although neither one would apply to most statements made by pastors during church services;[13]
- the House bill redefines "client" such that organizations that are *not* governed by 501(c) must make some disclosures regarding some of their *organizational members*, while the Senate bill does not alter the definition of "client";[14]
- the Senate bill gives grassroots lobbying firms 45 days to register from the time lobbying activities begin, while the House bill only gives them 20 days to register;[15]
- the House bill contains an additional reporting requirement for each expenditure by grassroots lobbying firms of $250,000, but the Senate bill does not;[16] and
- the House bill's investigation and enforcement provisions are tougher than the Senate bill's provisions.[17]

While the existing lobbying statutes provide that they shall not be construed to interfere with "the right to petition the Government for the redress of grievances . . . [or] the right of association, protected by the first amendment to the Constitution,"[18] H.R. 4682 and S.1 would do just that. By expanding the Lobbying Act to include many forms of political expression that are far removed from the traditional understanding of "lobbying," H.R. 4682 and S.1 would violate the First Amendment.[19] The bills are certainly *not* narrowly tailored to achieve a compelling governmental interest. Amendment 20 to S.1 should be adopted to exclude "grassroots lobbying firms."

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[12] *See* S.1 § 220(a)(2)(18)(B), amending Lobbying Act § 3.
[13] *Compare* S.1 § 220(a)(2)(18)(C), amending Lobbying Act § 3, *with* H.R. 4682 § 204(a)(2), amending Lobbying Act § 3.
[14] *See* H.R. 4682 § 205(a), amending Lobbying Act § 3(2).
[15] *Compare* S.1 § 220(b), amending Lobbying Act § 4(a), *with* H.R. 4682 § 204(b)(1), amending Lobbying Act § 4(a).
[16] *See* H.R. 4682 § 204(d)(2), amending Lobbying Act § 5(a)(2).
[17] *Compare* H.R. 4682 §§ 401-403, removing Lobbying Act § 8(c), *with* S.B. 1 §§ 218, 231-270, amending Lobbying Act § 6.
[18] Lobbying Act § 8(a).
[19] *See generally McConnell v. FEC*, 540 U.S. 93 (2003); *Buckley v. Am. Const. Law Found.*, 525 U.S. 182 (1999); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988); *Frisby v. Schultz*, 487 U.S. 474 (1988); *Meyer v. Grant*, 486 U.S. 414 (1988); *FCC v. League of Women Voters of Cal.*, 468 U.S. 364 (1984); *Consol. Edison Co. of N.Y. v. Pub. Serv. Comm'r of N.Y.*, 447 U.S. 530 (1980); *Buckley v. Valeo*, 424 U.S. 1 (1976); *Police Dep't of the City of Chicago v. Mosley*, 408 U.S. 92 (1972); *Mills v. Alabama*, 384 U.S. 214 (1966); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Talley v. California*, 362 U.S. 60 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958); *U.S. v. Harriss*, 347 U.S. 612 (1953); *Rumely v. United States*, 345 U.S. 41 (1953).

MEMORANDUM

TO: **Interested Parties**

FROM: **The American Center for Law and Justice**

RE: **Executive Summary of Response to the Campaign Legal Center's Memorandum to the United States Senate on Senate Bill 1, the "Grassroots Lobbying" Bill**

DATE: **January 12, 2007**

In a memorandum to the United States Senate entitled, "Disclosure of Paid Astroturf Lobbying," the Campaign Legal Center ("CLC") recently claimed that the "grassroots lobbying" provisions of Senate Bill 1[1] (namely Section 220) would only apply to "*a narrow class of professional lobbyists*."[2] The CLC memorandum claims that the bill is limited to "astroturf lobbying," a recently coined term used to describe "synthetic grassroots movements that now can be *manufactured for a fee by companies*" in which "*uninformed activists are recruited or means of deception are used to recruit them*."[3] Unfortunately, however, the bill's broad language would encompass many *churches, pastors, denominations, public interest organizations, law firms, radio and TV personalities, civic organizations, nonprofit and for-profit organizations, the media, and private individuals* that distribute a message about a federal legal issue to the general public.[4]

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[1] S.1, the Lobbying Transparency and Accountability Act of 2007 (introduced Jan. 4, 2007).
[2] Campaign Legal Center, "Disclosure of Paid Astroturf Lobbying," http://www.campaignlegalcenter.org/press-2342.html (last visited Jan. 12, 2007) ("CLC Memo") (emphasis added).
[3] Center for Media and Democracy, "Astroturf," http://www.sourcewatch.org/index.php?title=Astroturf (last visited Jan. 12, 2007) (emphasis added).
[4] *See* S.1 § 220(a)(2)(18), (19), amending the Lobbying Disclosure Act of 1995 ("Lobbying Act") § 3(18)-(20). The Lobbying Act is found at 2 U.S.C. §§ 1601 *et. seq.*

CLC's assertion that Section 220 of S.1 "easily passes constitutional muster"[5] is incorrect because S.1's broad provisions are *not* narrowly tailored to achieve a compelling government interest. *Amendment 20 to S.1*—sponsored by Senator Bennett and co-sponsored by several other Senators—would eliminate the provisions of S.1 dealing with "grassroots lobbying firms" and *ensure that churches and many other public interest organizations and individuals would not be subject to lobbying regulations*. All Senators should support Amendment 20 to S.1.

I. S.1's Grassroots Lobbying Provisions Go Far Beyond "Professional Lobbyists" and "Astroturf Lobbying."

Section 220 of S.1 would amend the Lobbying Disclosure Act of 1995 by creating *an entirely new class of lobbyist*—the "grassroots lobbying firm"[6]—that would be subject to the registration and reporting requirements applicable to traditional lobbyists.[7] The Senate bill defines "grassroots lobbying firm" as a "person or entity" that:

> (A) is retained by 1 or more clients to engage in paid efforts to stimulate grassroots lobbying on behalf of such clients; and
> (B) receives income of, or spends or agrees to spend, an aggregate of $25,000 or more for such efforts in any quarterly period.[8]

CLC relies upon five "limiting features" of Section 220 of S.1 to argue that the bill's coverage is limited to "a narrow class of professional lobbyists":

- the requirement of a "client";
- the distinction between "paid" and "unpaid" grassroots advocacy;
- the exception for an organization's internal communications with its members;
- the requirement that communications be "directed at" 500 or more people; and
- the $25,000 threshold.[9]

A review of each of these "limiting aspects" of Section 220, however, shows that the bill's language applies to many groups and individuals that are not "professional lobbyists."

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[5] *See* CLC Memo.
[6] S.1 § 220(a)(2)(18), (19), amending the Lobbying Act § 3(18)-(20).
[7] *See id.*
[8] S.1 § 220(a)(2)(19), amending Lobbying Act § 3.
[9] *See* CLC Memo.

A. *The Requirement of a "Client"*

While CLC emphasizes that a group must have a grassroots lobbying "client" before it can become a grassroots lobbying firm,[10] CLC fails to point out that *an organization can have itself as a "client"* under existing lobbying law.[11] The Senate bill *expands* the definition of "lobbying activities" to include "paid efforts to stimulate grassroots lobbying," so a group that engages in "paid efforts to stimulate grassroots lobbying" will be considered to be its own "client" under S.1.[12]

B. *The Distinction Between "Paid" and "Unpaid" Grassroots Advocacy*

S.1 defines "paid efforts to stimulate grassroots lobbying" as:

> any paid attempt in support of lobbying contacts on behalf of a client to influence the general public or segments thereof to contact 1 or more covered legislative or executive branch officials (or Congress as a whole) to urge such officials (or Congress) to take specific action with respect to a [federal legal issue] . . . .[13]

Many statements made by pastors about important moral and social issues "*influence*" those in attendance at church services to contact government officials with regard to a particular law or judicial nominee. While CLC argues that "[u]npaid grassroots advocacy by individuals and volunteer organizations will not be subject to disclosure,"[14] the "paid" aspect of the definition is met when an employee of an organization (such as a pastor) is involved because the bill does not differentiate between *paying others* to act and *being paid* to take action as a part of a person's job.[15]

C. *The Exception for an Organization's Internal Communications With Its Members.*

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[10] *Id.*
[11] Lobbying Act § 3(2) (emphasis added).
[12] Lobbying Act § 3(2); S.1 § 220(a)(1), amending Lobbying Act § 3(7).
[13] S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3.
[14] CLC Memo.
[15] S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3; *see also ACLU Letter to the Senate Opposing Expansions of Post-employment Bans and Regulations on Grassroots Lobbying*, Mar. 7, 2006, http://www.aclu.org/freespeech/gen/24423leg20060307.html (last visited Jan. 12, 2007). The reference to "lobbying contacts" does not exclude churches from the bill's coverage because S.1 does not require that an organization make its *own* "lobbying contacts" but rather applies to all individuals and groups that take action "*in support of lobbying contacts*" generally. *See* Lobbying Act § 3(8)(B)(xviii); S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3 (emphasis added).

CLC argues that S.1 is narrow in scope because the bill provides that the term "paid efforts to stimulate grassroots lobbying" does *not* include "any communications by an entity directed to its members, employees, officers, or shareholders."[16] This provision does *not* apply when people that are not members of the organization are also influenced to take action.[17] For example, this exception would not apply to statements made by a pastor during a church service that is open to both members and non-members or to e-mails or letters sent out by an organization where some of the individuals or groups on the mailing list are not members of or donors to the organization.[18]

D. *The Requirement that Communications Be "Directed At" 500 or More People.*

CLC also emphasizes a provision of S.1 that states that "paid efforts to stimulate grassroots lobbying" does not cover an attempt to influence people to contact federal officials regarding a specific legal issue "directed at less than 500 members of the general public."[19] This provision would have little practical impact because many individuals and groups seek to reach 500 or more people with their message.

E. *The $25,000 Threshold.*

CLC further notes that a person or group must receive, spend, or agree to spend an "aggregate of $25,000" within a quarterly period to stimulate "grassroots lobbying" in order to be a grassroots lobbying firm.[20] S.1 broadly defines "grassroots lobbying" as "the voluntary efforts of members of the general public to communicate their own views on an issue to Federal officials or to

[16] S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3.
[17] *See* S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3.
[18] *See id.*
[19] S.1 § 220(a)(2)(18)(B), amending Lobbying Act § 3.
[20] S.1 § 220(a)(2)(19), amending Lobbying Act § 3.

encourage other members of the general public to do the same."[21] Many churches, denominations, and public interest organizations would easily meet this $25,000 threshold.[22]

II. S.1's Grassroots Lobbying Provisions Would Violate the First Amendment.

As currently written, S.1's grassroots lobbying provisions would violate the First Amendment.[23] Organizations such as the American Civil Liberties Union and the Free Speech Coalition have already expressed opposition to the grassroots lobbying provisions of this and similar bills because the provisions are not narrowly tailored to achieve a compelling governmental interest.[24] S.1 would unconstitutionally expand existing lobbying law to broadly encompass nearly every aspect of "core political speech" relevant to grassroots politics.[25] Speech concerning political issues and proposed legislation is at the "core of the protection afforded by the First Amendment."[26]

The Supreme Court has explained, "[w]hen a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest."[27] CLC appears to overlook this "narrowly tailored" requirement when it argues, "*[o]nly* when a disclosure law fails to serve an important state purpose, such as providing

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[21] S.1 § 220(a)(2)(17), amending Lobbying Act § 3.

[22] A church or other exempt 501(c)(3) organization could meet the $25,000 threshold and trigger the new registration and filing requirements for "grassroots lobbying firms" without violating the "no substantial part" test already applicable to them under current tax law. The tax code provides exemption for churches and certain other organizations so long as "*no substantial part*" of their activities include, *inter alia*, "carrying on propaganda, or otherwise attempting, to influence legislation . . . ." I.R.C. § 501(c)(3) (emphasis added).

[23] *See generally McConnell v. FEC*, 540 U.S. 93 (2003); *Buckley v. Am. Const. Law Found.*, 525 U.S. 182 (1999); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *Riley v. National Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781 (1988); *Frisby v. Schultz*, 487 U.S. 474 (1988); *Meyer v. Grant*, 486 U.S. 414 (1988); *FCC v. League of Women Voters of Cal.*, 468 U.S. 364 (1984); *Consol. Edison Co. of N.Y. v. Pub. Serv. Comm'r of N.Y.*, 447 U.S. 530 (1980); *Buckley v. Valeo*, 424 U.S. 1 (1976); *Police Dep't of the City of Chicago v. Mosley*, 408 U.S. 92 (1972); *Mills v. Alabama*, 384 U.S. 214 (1966); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Talley v. California*, 362 U.S. 60 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958); *U.S. v. Harriss*, 347 U.S. 612 (1953); *Rumely v. United States*, 345 U.S. 41 (1953).

[24] *See, e.g.*, *ACLU Letter*, *supra* note 15; *Free Speech Coalition Letter to Public Citizen*, Dec. 14, 2006, http://freespeechcoalition.org/pdfs/ ClaybrookLetterAndAnalysis.pdf (last visited Jan. 12, 2007).

[25] *See Am. Const. Law Found.*, 525 U.S. at 186-87 (citing *Meyer v. Grant*, 486 U.S. 414, 422 (1988)).

[26] *McIntyre*, 514 U.S. at 346.

[27] *Id.* at 347 (citation omitted).

the electorate with useful information, will it run afoul of the First Amendment."[28] Many regulations affecting political speech may serve important (or compelling) state interests and still conflict with the First Amendment because they are not *narrowly tailored* to serve these interests.

Surprisingly, CLC's discussion of the First Amendment fails to mention *Rumely v. United States*,[29] a Supreme Court case directly on point. In *Rumely*, the Court considered a broadly worded Congressional resolution regarding lobbying as applied to an organization that sold and distributed pamphlets and books on public policy issues in an attempt to influence public opinion.[30] For example, when Congress was considering the Taft-Hartley law, the group published a pamphlet entitled, "Labor Monopolies or Freedom" of which 250,000 copies were distributed.[31] The Court held that the doctrine of constitutional avoidance required it to interpret the resolution to apply only to "lobbying in its commonly accepted sense," *i.e.*, "representations made directly to the Congress, its members, or its committees," and did *not* extend to citizen attempts "to saturate the thinking of the community."[32] As the Court explained:

> Surely it cannot be denied that giving the scope to the resolution for which the Government contends, that is, deriving from it *the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals,* however remote the radiations of influence which they may exert upon the ultimate legislative process, *raises doubts of constitutionality in view of the prohibition of the First Amendment.*[33]

The Supreme Court expressly adopted the Court of Appeals' analysis of the resolution, which had explained:

> It is said that lobbying itself is an evil and a danger. We agree that lobbying by personal contact may be an evil and a potential danger to the best in legislative processes. It is said that indirect lobbying by *the pressure of public opinion on the*

[28] CLC Memo (emphasis added).
[29] *Rumely*, 345 U.S. at 47.
[30] *Id.* at 50, 56 (Douglas, J., concurring).
[31] *Id.* at 51, n.3.
[32] *Id.* at 47 (opinion of the Court).
[33] *Id.* at 46 (emphasis added).

> *Congress* is an evil and a danger. *That is not an evil; it is a good, the healthy essence of the democratic process.*[34]

Under S.1's broad provisions, the activities in *Rumely* (distributing literature to influence public opinion) would likely be classified as "paid efforts to stimulate grassroots lobbying" subjecting the organization to onerous registration and reporting requirements. S.1 extends far beyond "lobbying in its commonly accepted sense" to cover citizen attempts "to saturate the thinking of the community,"[35] the very activity protected from burdensome regulation in *Rumely*.

CLC's analysis of *United States v. Harriss*,[36] the case upon which it primarily relies, is premised upon the erroneous claim that S.1 *only* requires the disclosure of activities of "professional lobbyists."[37] The *Harriss* Court narrowly construed a broadly worded lobbying statute to only apply to the activities of *professional lobbyists* and rejected "a broader application to organizations seeking to propagandize the general public."[38] Rather than supporting S.1's constitutionality, *Harriss* illustrates that S.1 would violate the First Amendment because the bill's definition of "grassroots lobbying firm" goes far beyond the activities of "professional lobbyists" to cover many churches, non-profit organizations and other groups and individuals that influence people to contact federal officials about legislation or judicial nominees.

CLC's analysis of cases involving ballot initiatives is also unconvincing. The cases cited do *not* stand for the broad proposition that all regulations requiring "the disclosure of funds spent to

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[34] *Rumely v. United States*, 197 F.2d 166, 173-74 (D.C. Cir. 1952) (emphasis added), *cited with approval by Rumely*, 345 U.S. at 47.
[35] *Rumely*, 345 U.S. at 47 (opinion of the Court).
[36] *Harriss*, 347 U.S. at 612.
[37] *See* CLC Memo.
[38] *Harriss*, 347 U.S. at 618-21.

pass or defeat ballot measures" are constitutional[39] but merely hold that statutes regulating core political speech must be narrowly tailored to achieve a compelling government interest.[40]

Conclusion

The "grassroots lobbying" provisions of Senate Bill 1 would affect far more individuals and groups than "a narrow class of professional lobbyists."[41] S.1's broad language would apply to many churches, denominations, public interest organizations and private individuals that share their views on a federal legal issue with the general public. The "limiting features" of the bill relied upon by CLC do *not* limit the bill's coverage to "astroturf lobbying" by professional lobbyists. As other organizations have already noted,[42] the bill would violate the First Amendment as currently written because it is not narrowly tailored to achieve a compelling governmental interest. All Senators should support Senator Bennett's *Amendment 20 to S.1* which would eliminate the provisions of the Senate bill dealing with "grassroots lobbying firms."

[39] CLC Memo.
[40] *See Am. Const. Law Found*, 525 U.S. at 182; *McIntyre*, 514 U.S. at 334; *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 300 (1981); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); *California Pro-Life Council v. Getman*, 328 F.3d 1088, 1107 (9th Cir. 2003).
[41] *See* CLC Memo.
[42] *See supra* note 24.

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REGULATING GRASSROOTS ACTIVITIES

For whose benefit?

Mark J. Fitzgibbons/Special to The National Law Journal
July 10, 2006

With members of Congress embroiled in scandals for obtaining discounted mansions, being flown to Scotland to golf and apparently getting cash for legislative favors, the response of the world's greatest deliberative body would be to regulate the grassroots. Justice William J. Brennan Jr. called the grassroots "citizen-critic[s] of government" who expose errors of public officials and bring about political and social changes desired by the people. Section 220 of the Senate-passed lobbying reform bill, S. 2349, would require registration and quarterly reporting of grassroots lobbying just like direct lobbying, except worse.

The Senate bill would require "paid" efforts to stimulate citizens into public policy action to be registered and disclosed every three months with Congress. Proponents tout the bill as targeted at paid professional and "astroturf" grassroots lobbying (industry-generated lobbying under the guise of citizen action groups). Were that the case, industry groups could still argue that the First Amendment protects anonymous speech, and that rights of political speech, the printing press, association and petitioning the government are not subject to prior restraints of obtaining "permission" from Congress absent some showing of harm.

Many incumbents would prefer to silence critics, but legislatures rarely censor so blatantly that courts would rebuff them even under diminished First Amendment standards of review. Proponents of regulating the grassroots don't disclose that this bill regulates even small associations of real citizen activists petitioning the government. S. 2349 defines "paid efforts" to stimulate grassroots lobbying as communications to 500 or more members of the general public to influence people to take action on policy matters. That would have been an unacceptable threshold even in colonial days of printing leaflets. In these days of mass communications and the Internet, this definition of "paid" is indefensible.

S. 2349 amends the Disclosure of Lobbying Activities Act, 2 U.S.C. 1601 et seq. (DLA), which requires disclosure of direct lobbying. Direct lobbying is done by those retained (K Street) and those employed (trade associations, etc.), and consists of lobbying contacts plus lobbying activity. Lobbying "contacts" are communications with legislators, their staff and other federal policymaking officials. Lobbying "activity" is the background work of research and strategy in support of lobbying contacts. The DLA states it won't interfere with three First Amendment rights (speech, association, petitioning), but even statutory restatement of those rights didn't protect from the Senate's planned encroachment.

Overbroad definition of lobbying

The DLA regulates lobbying on federal legislation, regulations, judicial and cabinet appointments, and Pentagon and White House policy. By redefining lobbying activities to include communications to 500 or more members of the public, S. 2349 turns the definition of lobbying on its head. Books,

blogs and broadcasts could now be considered lobbying activity subject to registration with Congress if they influence people to take action on policy issues. Once an employed person has written, phoned or even e-mailed Congress, the White House or officials at federal agencies to take action on policy matters, a speech or publication urging citizen action may make that person a lobbyist and her employer a client to be registered with Congress. Pure volunteer, kitchen-table activists would be exempted for now, but the causes for which they volunteer would need to register.

The DLA exempts from registration low-costing direct lobbying, which would be defined as $2,500 paid to retained lobbyists or $10,000 expended by in-house lobbyists per quarter under the new rules. No such low-dollar exemption would apply to grassroots lobbying, so the expenditure of literally one dollar every three months on grassroots lobbying would require disclosure of the effort. Many small, low-budgeted, community-based groups that operate no more than blogs would be treated like K Street lobbyists merely by encouraging citizens to engage in their First Amendment rights to petition the government.

The bill places these burdens on small grassroots causes, yet gives large entities an outright exemption for communications to "members, employees, officers or shareholders." The largest corporations and unions could therefore spend literally hundreds of millions of dollars organizing many millions of their associates, yet still not report. This exemption is easy to exploit, helps K Street and protects Wall Street, but treats Main Street as the "stealthy world" of big-money influence on Washington.

The legal community engages in advocacy through speech and publication, and, whether out of constitutional sensitivities or self-interest, should oppose regulating the grassroots by contacting the House/Senate conferees of the lobbying reform bills. Even this opinion piece, by urging citizen action, would be a lobbying activity, and many of us would become "accidental" lobbyists subject to registration with Congress.

Mark J. Fitzgibbons is president of corporate/legal affairs at Manassas, Va.'s American Target Advertising Inc., which pioneered political and ideological direct mail in the 1960s. He can be reached at Mfitzgibbons@americantarget.com.

Congress of the United States
House of Representatives
Washington, DC 20515

February 26, 2007

The Honorable John Conyers, Jr.
Chairman
House Committee on the Judiciary
2138 Rayburn HOB
Washington, D.C. 20515

Dear Chairman Conyers:

We are writing to encourage your opposition to legislation requiring registration and reporting of grassroots lobbying that may come before your Committee during the 110th Congress. Though improved disclosure of lobbying activities is an admirable goal, our concern is that such regulation may inhibit legitimate grassroots activities, which play an important role in educating citizens about what is happening in Congress. The First Amendment rights of Americans to freely petition, call or visit with their elected representative, and to encourage others to do the same, must be protected.

In January, the Senate rejected a provision requiring the disclosure of paid efforts to stimulate grassroots lobbying during consideration of their ethics reform package, S. 1. This provision would have required any organization that spends $25,000 per quarter on grassroots efforts to file lobbying registration and disclosure reports, exposing those in violation to a $200,000 fine.

Though hypothetically aimed at professional "astroturf" lobbying, the practical effect of this legislation would be to discourage the constitutionally-protected activities of all groups that seek to mobilize citizens on legislative issues. It would place burdensome regulations on legitimate organizations and result in a chilling effect on their activities. Faced with the risk of severe fines and criminal prosecution, many would decide it is not worth the cost to communicate to the public about policy, especially smaller organizations that lack the legal resources to fulfill the reporting requirements.

We urge your opposition to any legislation before the House Committee on the Judiciary that proposes these unconstitutional regulations of grassroots lobbying.

Sincerely,

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Jerry Moran

Robert B. Aderholt

Doug Lamborn

Virgil Goode

John Shadegg

John Carter TX-31

Bill Young

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Jack Kingston

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January 15, 2007, 0:30 a.m.

MLK, Grassroots Lobbyist

Imagine if Jim Crow states could have known the names of the people in the organizations working with Martin Luther King Jr.

By Stephen M. Hoersting

Forty-three years ago, civil-rights leader Martin Luther King Jr. declared his dream to 250,000 marchers and a national television audience: an America without racial segregation.

King recognized that a decades-long grassroots campaign of nonviolent protest, culminating in the 1963 March on Washington, might bring his dream into reality. That grassroots effort, and the media campaign surrounding it, was the most successful in American history, and led to passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

It's easy to look back fondly now on the March on Washington as a spontaneous gathering on a subject no one could oppose. But the event was planned for years, with a first attempt jettisoned in 1941 by the International Brotherhood of Sleeping Car Porters, one of the "Big Six" civil-rights organizations that planned the 1963 March. We forget about the "freedom trains" and "freedom buses" that brought marchers to Washington from all parts of the United States, and pass easily over the planning and financing that were necessary to bring the march together.

We can forget that many powerful forces did oppose the civil rights movement; Jim Crow was the law of the land in many southern states. And we can forget that King led Rosa Parks in the Montgomery Bus Boycott of Jim Crow in the mid 1950s, for which he had his house bombed and also was arrested. We forget that the FBI wiretapped King and his Southern Christian Leadership Conference in 1961 to determine whether he was mixed up with the Communists, and when that FBI rationale evaporated, it still used incidental details caught on tape in an attempt to force him out of the leadership of the organization.

We cannot forget that King was out front on an issue of national importance. We cannot forget his fate, and that it was a tragedy. In such an environment, we might wonder how secure would be his backers and consultants if the "Big Six" had to register with the government, disclose their spending, and report the names of the consultants brave enough to help them.

This is now a pertinent question as the Senate takes up grassroots-lobbying provisions in the ethics and lobbying-reform bill. One provision would amend the definition of "lobbying activities" to include "paid efforts to stimulate grassroots lobbying" directed at more than 500 members of the general public. There is a low-dollar registration exemption that applies to direct lobbyists, but it appears the bill would regulate low-dollar communications by nonprofits, corporations, and other organizations by specifically making their "paid" grassroots communications ineligible for the

registration exemptions. There is a $25,000 threshold for what the bill (creates and) calls a "grassroots lobbying firm," but it is unclear whether the quarterly threshold would apply to nonprofits, individuals, and other small causes, including bloggers. Even if it did, $25,000 is less than the cost of placing one ad in the *New York Times*'s national edition, and less than what many nonprofits pay quarterly for direct mail.

Proponents of this "reform" call the activity they wish to regulate "Astroturf lobbying" to imply that the public outcry from such campaigns is somehow fake, manufactured, or unrepresentative of citizen sentiment, because it is corporations and other advocates who alert citizens to the issue and encourage citizen involvement. But all grassroots lobbying campaigns are organic, in that they tap true concerns of real citizens. Whatever stimulates a citizen to speak out or get involved, once he is involved he speaks for reasons of his own, and speaks directly to his elected representatives. This is precisely the point of participatory democracy in a republican form of government. As noted by political analyst Ron Faucheux, "Critics who decry the artificiality of grassroots campaigns and disparage the manufacturing of public sentiment by well-heeled corporations and interest groups miss one point: grassroots lobbying … is a valid way to increase public awareness and participation in the governmental process."

Grassroots-lobbying disclosure appears to put two canons of political law on an apparent collision course: that government corruption is cured by disclosure; and that the right of individuals to speak and associate freely depends upon their ability to do so anonymously. But the conflict is a false one because both canons achieve the same purpose when each is applied to its proper context; both protect citizens from abusive officeholders. Disclosure regimes for campaign contributions and direct lobbying protect citizens from officeholders who can confer benefits on large contributors (and pain on opponents) by passing future legislation. Regimes that protect the right to speak anonymously with fellow citizens about issues, even issues of official action or pending legislation, also protect citizens from abusive officeholders by reducing an officeholder's ability to visit retribution on those who would oppose his policy preferences.

And there is no doubt that the danger of retribution by politicians is real. It is not hard to imagine, for example, why one Jim Crow state might have wanted to know the names of all NAACP members in 1950s Alabama, and why the Supreme Court said in response to Alabama's desire to learn those names that "[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action." It is also easy to imagine the leverage Alabama could have put on the NAACP and the rest of the "Big Six" civil-rights groups if 1950s Alabama knew about the NAACP what the twenty-first century Congress proposes to learn about grassroots organizations.

It is easy to kid ourselves that there will never be a cause so divisive and deserving as racial equality that disclosure could now impede its progress. But we cannot know this with certainty, and, if the past is to be our guide, it seems that there surely will be such an issue in the future. That it is why it is important to remember Martin Luther King Jr., the civil-rights struggle, and the 1963 March on Washington, when we are considering measures that may frighten tomorrow's skilled consultants away from tomorrow's unpopular causes.

— Stephen M. Hoersting is executive director of the Center for Competitive Politics.

Auto Safety Group • Congress Watch • Energy Program • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

March 1, 2007

The Hon. Jerrold Nadler, Chairman
The Hon. Trent Franks, Ranking Member
Subcommittee on the Constitution, Civil Rights
and Civil Liberties
U.S. House of Representatives
Washington, D.C. 20515

RE: Lobbying and ethics reform legislation

Dear Chairman and Ranking Member:

As your subcommittee of the House Judiciary Committee grapples with one of the most important legislative proposals under consideration in the 110th Congress – lobbying and ethics reform – Public Citizen would like to highlight the significance of the issues to be considered.

We express our appreciation to this subcommittee, and the 110th Congress as a whole, for treating the issue of lobbying and ethics scandals with the expediency and seriousness it deserves. On Day One of the new session, the House nearly unanimously adopted a series of gift, travel and earmark rules that do address some of the causes of the scandals that swept across the Hill in the previous Congress. The Senate followed suit with a lobbying and ethics bill (S. 1) that is the most comprehensive reform legislation the public has seen in decades. We are now considering the stewardship of the Senate's intentions in the House.

Public Citizen strongly encourages the Judiciary Committee to report out a House lobbying and ethics reform proposal that is as meaningful to citizens as the bill approved by the Senate on January 18th by a vote of 96-to-2.

Many of the reforms offered in S. 1 are widely accepted inside and outside Congress and should encounter little opposition, such as electronic reporting of lobbyist financial activity reports and closer scrutiny of privately-sponsored travel for Members and staff.

But some of the most critical reforms offered in the Senate bill are being more closely examined in the House. These include:

- Disclosure of lobbyist bundling for candidates and parties;
- Expanding the scope of prohibited lobbying activity for Members and senior executive branch officials for a brief period after leaving public service;
- Disclosure of the funding sources behind paid grassroots lobbying campaigns; and

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- Establishing an effective means to monitor and enforce the lobbying and ethics laws and rules.

1. Disclose Lobbyist Bundling

The Senate bill contains a comprehensive disclosure requirement on lobbyist contributions, fundraising activities and bundling of campaign contributions for candidates. [Section 212] Lobbyists would be required to report, on lobbying disclosure forms filed quarterly:

- Direct campaign contributions of $200 or more to candidates or committees;
- The date, location and good faith estimate of total funds raised at any fundraising event for candidates or officeholders hosted or co-hosted by the lobbyist;
- Expenditures made to pay the cost of events that honor officeholders; and
- Contributions bundled by the lobbyist to a candidate.

"Bundled" contributions means contributions in which the lobbyist has worked out an arrangement with the candidate to raise and receive credit for specific contributions collected or arranged by the lobbyist. The practice effectively allows bundlers to receive credit from a candidate for contributing much more money to the campaign than they could personally contribute under campaign finance laws – without any disclosure of this fundraising activity to the public, unless the campaigns choose to do so voluntarily.

Most of these fundraising disclosure proposals have already gained acceptance in the House, as they should. Disclosure of money in politics is an absolute bedrock principle of any serious reform legislation to clean up Washington. But the bundling provision has encountered some opposition, largely because it is misunderstood.

The bundling disclosure provision is sometimes misrepresented to impose an impossible reporting burden in which lobbyists must declare every solicitation or recommendation[s] given to potential campaign donors. This is absolutely not the case. Under the proposal, only bundled campaign contributions in which the lobbyist and campaign know that contributions raised by the lobbyist were or will be credited to the lobbyist by the campaign are subject to the disclosure requirement. Only a good faith estimate of the total amount raised by the lobbyist for the campaign must be disclosed by the lobbyist. Routine solicitations, suggestions and requests for campaign contributions for candidates, officeholders and political committees that are not systematically credited to the lobbyist by the campaign are not subject to the disclosure requirement.

Representatives Chris Van Hollen and Marty Meehan have introduced legislation this year to require lobbyists to disclose bundled contributions that is the same as the bundling disclosure provision passed by the Senate. This language should be included in the lobbying reform bill reported by the Judiciary Committee.

2. Slow the Revolving Door

In the Ethics Reform Act of 1989, Congress banned lobbying of their own respective branches of government by former senior executive branch officials and Members of Congress for one year after

leaving office. Very senior congressional staff (defined as those who make 75 percent or more of a Member's salary) are prohibited from lobbying their former office or committee for one year.

Unfortunately, the current "cooling-off" period has been interpreted to apply only to "lobbying contacts" – direct oral or written lobbying communications. Former public officials can and do engage in all other lobbying activity, including planning lobbying strategy, supervising a team of lobbyists and making lobbying contacts with others in government who were not in the same branch of government. They are prohibited only from picking up the telephone and calling their former colleagues.

As a result, the current revolving door policy is a failure. Currently, 43 percent of retiring members of Congress spin through the revolving door to become lobbyists. [See "A Matter of Trust" at http://www.cleanupwashington.org/documents/RevovDoor.pdf] The *National Journal* found that the revolving door is spinning out of control even for senior congressional staffers. In a brief six-month period from October 2003 through March 2004, at least 107 former senior congressional staffers – or 17 percent of those who worked in Congress during that period – took jobs in the lobbying or government affairs sectors.[1]

The Senate bill seeks to restore the integrity of the revolving door restriction by extending the cooling-off period from one year to two for Members and executive branch officials. Far more importantly, the bill also proposes:

- Including a ban on "lobbying activity" – narrowly defined as *work for compensation specifically intended at the time it is being done to facilitate a lobbying contact* – for Members and executive branch officials during the cooling-off period.
- Keeping the one-year cooling off period on making lobbying contacts by senior congressional staff, but including contacts to the body of Congress for which they worked in the ban rather than just the congressional office or committee for whom they worked. *Only senior congressional staff – those who make 75 percent or more of a Member's salary ($123,900 or more) – would be affected.*

The House should take the same bold steps to halt revolving door abuse. Under this revolving door restriction, former public officials can still join law firms, public relations firms, write books, give speeches, and pursue all other legitimate career opportunities – they merely must refrain from working as a paid lobbyist during the brief cooling-off period.

3. Disclose Funding of Paid Grassroots Lobbying by For-Profit Firms.

Paid "grassroots lobbying" campaigns involve millions of dollars each year in paid media, phone bank, direct mail and other paid public communications campaigns to influence the passage of legislation in Congress. Currently the huge amounts spent on these lobbying campaigns are not disclosed. While the Senate voted down a provision on grassroots lobbying disclosure, the House should enact a narrower measure requiring enhanced disclosure for lobbying for-profit firms and outside vendors.

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[1] Gregg Sangillo, "Lobbying – K Street Moves," *National Journal* (2006).

Most non-profit organizations and charities are already required to report a good faith estimate of total "grassroots lobbying" expenditures to the IRS on their annual Form 990. "Grassroots lobbying" is narrowly defined by the IRS as mass communications calling for the general public to contact Congress or other federal officials to influence passage of pending legislation or regulations. It is limited to a call for action on active legislation.

While most non-profits must report their grassroots lobbying expenditures to the IRS, lobbying firms, direct mail firms, outside vendors, companies and industries do not report their grassroots lobbying expenditures either to the IRS or under the Lobbying Disclosure Act (LDA). Since outside vendors and other private companies need not report their grassroots lobbying expenditures nor the identities of their clients, the public is frequently left in the dark as to who is paying for a lobbying campaign.

Public Citizen has documented several organizations that falsely represent themselves as grassroots entities while spending millions on behalf of wealthy special interests to promote a secret legislative agenda. For example, the Save Our Species Alliance recently sought to gut the Endangered Species Act to promote industry-friendly land management; and Citizens for Asbestos Reform, based out of the offices of the American Insurance Association, supported legislation in 2003 that would have prevented citizens harmed by asbestos from seeking redress in the courts. [To read the report "Organizing Astroturf" go to: http://www.cleanupwashington.org/documents/astroturf.pdf]

The U.S. Supreme Court has long recognized that it is in the public's best interest, and in the interest of Congress, to provide full disclosure of the money being spent to influence legislation, and has upheld grassroots lobbying disclosure requirements.[2] Legislators need this information to properly evaluate the political pressures to which they are being subjected. The public and lawmakers need this information to evaluate the credibility of arguments being made for and against legislation. The House should require disclosure of the funding sources behind paid grassroots lobbying campaigns to influence the general public to lobby Congress, particularly when outside vendors are paid by otherwise-anonymous clients to wage these campaigns.

4. Create an Independent Monitoring and Enforcement Entity.

No matter how well the new lobbying laws and ethics rules are written, they mean little if no one is monitoring compliance and ensuring enforcement against violations. Compliance with federal lobbying laws and ethics rules are the responsibility of a loose confederation of agencies, which generally operate in secret, shun working with each other, and wield little enforcement authority. The Secretary of the Senate, Clerk of the House, Senate Select Committee on Ethics, House Committee on Standards of Official Conduct and, lastly, the Department of Justice all share some responsibility for these laws and rules. All of them tend to operate in secret.

The resulting hodgepodge allows lobbyists who wish not to play by the rules to find plenty of opportunity to hide; and makes it difficult for government officials to understand, let only comply with, congressional ethics rules. The absence of an independent lobbying and ethics entity – often referred to as an Office of Public Integrity (OPI) – does not inspire confidence among the public that the nation's lobbying laws and ethics rules are being enforced.

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[2] See U.S. v. Harriss, 347 U.S. 612 (1954). (Disclosure requirements are an act of political "self protection.")

It is essential to establish a new means for overseeing and enforcing congressional ethics rules if new, and old, rules are going to be effective in the future. An independent, nonpartisan and professional Office of Public Integrity in Congress should be created to oversee and enforce ethics rules and lobbying laws. The Office would be responsible for many of the tasks currently assigned to the congressional ethics committees, the Clerk of the House and the Secretary of the Senate.

The duties of the Office would include the following:

- Overseeing and reviewing financial disclosure and other reports filed by members of Congress and lobbying reports filed by lobbyists;
- Advising Members and lobbyists on compliance with ethics and lobbying rules;
- Investigating non-frivolous allegations of ethics violations, including complaints filed by Members and outside individuals and groups, and matters investigated on the basis of the Office's own inherent jurisdiction. In any case where the Office determines a complaint is frivolous, the complainant will be barred from filing future complaints and will be liable for costs;
- Presenting cases and evidence of probable ethics violations to the ethics committees for decisions of whether violations have occurred, and recommending sanctions where ethics violations are found by the committees; and
- Referring probable violations of the lobbying laws by lobbyists and lobbying organizations to the Justice Department for appropriate enforcement actions.

Action is Needed to Restore Public Confidence in the Integrity of Federal Government

Lobbying and ethics scandals swept over the last Congress and helped change the face of Capitol Hill. So far, the new Congress has acted swiftly in attempting to reform congressional ethics rules and lobbying laws. The House kicked off its session by passing meaningful new ethics rules on gifts, travel and earmarks. The Senate responded by passing similar ethics reforms and a comprehensive lobbying law addressing lobbyist fundraising activities and revolving door abuses.

It is now jointly the responsibility of the House and Senate to carry through on promises to clean up Washington. The House should approve the legislation similar to S. 1 that would: require disclosure of lobbyist bundling activity, curtail the revolving door, disclose the funding sources behind paid grassroots lobbying, and create an effective entity to monitor compliance to the new laws and rules.

Sincerely,

Laura MacCleery
Director
Public Citizen's Congress Watch

Craig Holman
Legislative Representative
Public Citizen

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Senate Lobbying Reform Legislation: Specific Provisions Relating to Nonprofits

This paper provides a summary of action to date on legislation being considered on the Senate floor and a review of provisions relating to nonprofits. Although the entire legislation affects the nonprofit community by helping to offset the role money has in influencing public policy, there are provisions specifically applying to nonprofits that we describe.

Summary of action to date:

On March 6, the Senate combined two bills, S. 2128, the Lobbying Transparency and Accountability, which was reported out of the Homeland Security and Governmental Affairs Committee, and S. 2349, the Legislative Transparency and Accountability Act, which was reported out of the Rules Committee. The combined bill is being debated as S. 2349.

On March 8, debate continued on S. 2349. The amendments that were considered were as follows:

- An amendment to strike the meals and refreshments exception for lobbyists, creating a total ban on travel and gifts paid for by lobbyists. It was agreed to by voice vote. (Dodd, D-CT)
- An amendment to add Title III of S. 2180, the Honest Leadership and Open Government Act. This included a range of changes that were in the Democrats leadership bill supported by nearly the whole Democratic caucus. It was rejected 44-55.(Reid, D-NV)
- An amendment to deny Members who oppose cost-of-living adjustments (COLAs) the increased pay. It was agreed to by voice vote. (Inhofe, R-OK)
- An amendment to establish as a standing order of the Senate a requirement that a Senator publicly disclose a notice of intent to object to proceeding to any measure or matter. This would stop anonymous holds on bills. The amendment is still pending. (Wyden, D-OR and Grassley, R-IA)
- An amendment to the Wyden amendment, to prohibit any foreign-government-owned or controlled company that recognized the Taliban as the legitimate government of Afghanistan during the Taliban's rule between 1996-2001, may own, lease, operate, or manage real property or facility at a United States port, pending at recess. This amendment would ban Dubai Ports World from operating U.S. ports. (Schumer, D-N.Y.)

Frist then made a motion to close debate (invoke cloture) on consideration of S. 2349 in order to stop debate on the Schumer amendment. If the cloture motion were to garner the required votes, Schumer's amendment could be set aside as non-germane. Usually this takes 60 votes, but because the underlying lobbying bill changes Senate rules, Republicans needed a two-thirds majority of those voting to invoke cloture. On March 9, Frist's motion was considered, and rejected 51-47. In response, Frist pulled the bill, saying that he intended to work with the four managers to get consensus on a cloture vote and then bring the bill up

next week.

At the same time, Dubai Ports World announced its intention to "transfer" authority for the U.S. ports operations to a U.S. company. The White House said that decision should provide a "way forward." But Schumer said that until the details are provided, he does not intend to withdraw his amendment.

Nonprofit Provisions:

1. Coalition provision

S. 2349 requires disclosure of organizations that (1) contribute $10,000 or more to a coalition or association registered under the LDA; and (2) plans, supervises or controls in a substantial way in the management of lobbying activities. S. 2349 contains an additional provision exempting disclosure if it is "publicly available knowledge that the organization that would be identified is affiliated with the client or has been publicly disclosed to have provided funding to the client, unless the organization in whole or in major part plans, supervises or controls such lobbying activities." This includes an affirmative statement that this provision should not be interpreted to require the disclosure members of, or donors to, an organization.

Sen. Rick Santorum (R-PA) is considering offering an amendment to strip the coalition provision. (Congress Daily, 3/7/06)

2. Grassroots Lobbying Provision

In the March 2 markup of S. 2128, Sens. Joseph Lieberman (D-CT) and Carl Levin (D-MI) offered an amendment to change requirements under the Lobbying Disclosure Act (LDA) to include grassroots lobbying disclosure. The amendment passed, 10-6. Key elements of the grassroots lobbying provision include:

- While grassroots lobbying expenditures would not be used to calculate if an organization is required to report, expenditures of $25,000 or more per quarter for grassroots lobbying would have to be disclosed for organizations already reporting under the LDA.
- The amendment excludes any grassroots lobbying communications to an organization's members. This is defined in accordance with the tax code definition -- i.e. anyone who contributes more than a nominal amount of time or money to the organization or is entitled to participate in the governance of the nonprofit. Reporting would also not include communications directed at less than 500 members of the general public. Voluntary or unpaid grassroots lobbying efforts also does not need to be reported.
- 501(c)(3) organizations are allowed to use the tax code definitions of grassroots lobbying in place of the new definitions.

Both Santorum and Sen. Robert Bennett (R-UT) have made comments they did not like the grassroots lobby disclosure provision. Bennett said he expected someone to offer an amendment to strike the provision. (Congress Daily 3/8/06)

Republicans in the House and Senate have been heavily lobbied by a coalition of conservative groups calling themselves "Lobbysense" (www.lobbysense.com). The group continues to have a lobby presence on the Hill. The ACLU also recently sent up a letter protesting the grassroots lobbying provision.

(http://www.aclu.org/freespeech/gen/24423leg20060307.html).

Update: Bennett has introduced an amendment (SA 2994) to strike section 220 of the Lott bill, which is the grassroots lobby disclosure provision.

3. Disclosure of Campaign Contributions

S. 2349 requires registrants under the Lobbying Disclosure Act to make an annual disclosure of contributions to federal candidates and office holders, leadership PACs and political party committees — but not to their employers as previously proposed. Originally, the bill required the disclosure through the LDA reporting; thus, employers could see the political contributions. Instead, under the new provision registered lobbying employees would have to report contributions over $200 directly to the Office of the House Clerk and/or the Secretary of the Senate.

4. Disclosure of Donations

There is currently a provision in S. 2349 that requires registered lobbyists or an employee listed as a lobbyist to disclose the date, recipient and amount of funds the lobbyist contributed, disbursed or arranged to an entity "established, financed, maintained, or controlled" by members of Congress, or key congressional or executive branch staff. This would cover contributions to charities. The definition of "controlled" is not provided.

In addition, lobbyists would also need to disclose funds:

- To pay the costs of an event to honor or recognize a covered official;
- To, or on behalf of, an entity that is named for a covered official, or to a person or entity in recognition of such official; or
- To pay the costs of a meeting, retreat, conference or other similar event held by, or for the benefit of, one or more covered officials.

The above provision does not apply to donations made to political committees and are otherwise required reported under FECA.

Sen. Max Baucus (D-MT) also introduced an amendment on March 8 that would require disclosure of donations of more than $200 to any charity "substantially influenced" by a Member or Member's spouse. (This broadens it beyond lobbyist disclosure, as currently in the bill.) The amendment would also prohibit: Members, their spouses or their staff from receiving compensation from the charity; an individual or firm from receiving any money from the charity if they have financial ties to a Member's political action committee: and use of the charities funds for a Member's travel when engaging in fundraising activities, including through payment to another charity to pay for a Member's travel. There are limited exceptions to the prohibitions.

The Baucus amendment was tabled. It is not clear if it will emerge again.

5. Travel/Gifts

S. 2349 requires lobbyists to provide detailed documentation on travel they organize for lawmakers, staff and executive branch officials — including itemized reports of all payments, reimbursements and travel expenses, along with the purpose, final itinerary and

sponsor list for the trip. Lobbyists also must disclose any other expenses they cover.

The bill also prohibits lobbyists from giving gifts to or sponsoring travel for members or staff, unless the gift or travel is in conformity with current House and Senate rules. Lobbyists would also be required to report gifts of $20 or more given to lawmakers or executive branch employees.

Sen. Harry Reid (D-NV) offered an amendment to include Section III of his bill, S. 2180 (see above), which failed. The amendment would have, among other provisions, banned gifts from registered lobbyists, and modify Rule 35 of the Standing Rules of the Senate to state that a Member of Congress or congressional employee may go on a trip sponsored by a 501 (c)(3) organization, as long as a lobbyist does not take a major role in planning or financing the trip, or participate in the trip. The charity must then provide certification to the Select Committee on Ethics that the lobbyist did not plan or attend the trip. Additionally, any 501(c) (3) organization that is affiliated with any group that lobbies before Congress is prohibited from arranging or paying for travel. Banned privately funded travel except travel by a 501(c) (3) that is not affiliated with any group that lobbies before Congress.

6. Disclosure of Lobbying for Federal Funds

Sen. Tom Coburn (R-OK) and Sen. Barack Obama (R-IL) filed an amendment requiring recipients of federal funds, if they are currently filing under the LDA, to disclose the following on their LDA form:

- the costs and a description of any lobbying activities engaged in
- the name of any currently registered lobbyists that was paid money to lobby for Federal funding
- the amount of money paid to the lobbyist.

Federal funds are described as an "award, grant or loan".

7. Inhofe Amendment

An amendment filed by James Inhofe (R-OK) adds a penalty clause to Sec. 18 of the LDA, which prohibits 501(c)(4) organizations that engages in lobbying activities from applying for Federal funds. The amendment adds a provision that if a 501 (c) organization engages in lobbying activities with Federal funds an officer of the organization can be be imprisoned for not more than 5 years and fined.

Congressional Revolving Doors:

The Journey from Congress to K Street

Congress Watch
July 2005

Acknowledgments
Congress Watch Research and Investigations Director Brad White was the primary author of *Congressional Revolving Doors: The Journey from Congress to K Street.* Congress Watch Director Frank Clemente provided significant editorial guidance for this report. Congress Watch Senior Researcher Taylor Lincoln compiled much of the data used in the report and was assisted by Administrative Assistants Kevin O'Connor and Christina Francisco. Campaign Finance Reform Legislative Representative Craig Holman furnished policy guidance. Senior Researcher Karen Robb contributed significant editorial review. Research Interns David Kling and Michael Jared also provided extensive research assistance. Intern Priya De Souza provided data and graphics assistance.

About Public Citizen
Public Citizen is a 150,000 member non-profit organization based in Washington, D.C. We represent consumer interests through lobbying, litigation, research and public education. Founded in 1971, Public Citizen fights for consumer rights in the marketplace, safe and affordable health care, campaign finance reform, fair trade, clean and safe energy sources, and corporate and government accountability. Public Citizen has five divisions and is active in every public forum: Congress, the courts, governmental agencies and the media. Congress Watch is one of the five divisions.

Public Citizen's Congress Watch
215 Pennsylvania Ave. S.E.
Washington, D.C. 20003
P: 202-546-4996
F: 202-547-7392
http://www.citizen.org

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Executive Summary

The revolving door on the journey from Capitol Hill to the lucrative world of federal lobbying is spinning at a rapid rate. Congress is no longer a mere destination for those seeking a seat in one of the world's most famous legislative bodies. For many lawmakers, it has become a way station to wealth, a necessary period of job training and network building so that after leaving their public service jobs they can sell their influence to those with deep pockets.

Public Citizen analyzed hundreds of lobbyist registration documents filed in compliance with the Lobbying Disclosure Act (LDA) and the Foreign Agents Registration Act (FARA), along with news media and industry reports detailing the journey of former members of Congress through the revolving door to the lucrative influence-peddling industry.

In analyzing the members of Congress who have left Capitol Hill since 1998, when lobbyist registration documents were first posted online, several notable findings emerged:

Lobbying is the Top Career Choice for Departing Members of Congress

- Forty-three percent of the 198 members who have left Congress since 1998 and were eligible to lobby have become registered lobbyists. (Eligible former members excludes those who died in office, moved from one congressional house to another [i.e., House to the Senate], took a job in the executive branch during the course of their term that they have yet to relinquish or were incarcerated upon leaving.)

- Fifty percent of eligible departing senators have become lobbyists (18 of 36).

- Forty-two percent of eligible departing House members have become lobbyists (68 of 162).

Departing Republican Members Lead Democrats in the Rush to K Street

- Almost 52 percent of the Republican members of Congress who left Capitol Hill since 1998 registered to lobby (58 of 112). Thirty-three percent of the departing Democrats chose the same career path (28 of 86).

- In the Senate, two-thirds (66.7 percent) of departing Republicans became lobbyists (12 of 18) compared with one-third (33.3 percent) of departing Democrats (6 of 18).

- In the House of Representatives, almost 49 percent of departing Republicans became lobbyists (46 of 94) compared with more than 32 percent of departing Democrats (22 of 68).

Partisan Power Appears to Affect Who Becomes a Lobbyist

- In 2000, the year George W. Bush became president and the Republicans retained control of both houses of Congress, the percentage of departing Democrats who became lobbyists dropped sharply. Only 15 percent of Democrats (2 of 13) became lobbyists after the 2000 election compared with 62 percent of Republicans (23 of 37).

- In comparison, of the departing congressional class of 1998, 52 percent of the Democrats (12 of 23) became lobbyists versus 46 percent of the Republicans (11 of 24).

- Another possible explanation for the drop in Democrats in 2000 was the "K Street Project," an initiative pushed by anti-tax activist Grover Norquist, and supported by House Republican leaders, was aimed at getting as many Republicans as possible hired by the influence industry.

- Half of the departing members of Congress from the class of 2000 became lobbyists (25 of 50). It is the highest percentage of departing members from any of the years analyzed (1998-2004).

Six States Had the Most Former Members Become Lobbyists

- New York: 26 Representatives, 1 Senator
- Texas: 20 Representatives, 2 Senators
- Pennsylvania: 20 Representatives
- California: 17 Representatives
- Illinois: 13 Representatives, 2 Senators
- Florida: 13 Representatives, 1 Senator

A Case Study: Super-Lobbyist Bob Livingston

Public Citizen conducted an extensive examination of one lawmaker turned lobbyist to determine how much lobbying revenue a former member of Congress can generate and how he interacts with his former colleagues.

Bob Livingston left Congress in 1999 amid allegations of extramarital affairs. Within a week of his departure, the former chairman of the House Appropriations Committee formed a lobbying shop named the Livingston Group. The scandal that forced him from Congress did not appear to hurt his earning potential as a lobbyist.

In its first year of business, the Livingston Group pulled in $1.1 million, even though that was during Livingston's cooling-off period in which he was prohibited from directly lobbying his former colleagues. The cooling-off period, however, does not restrict a former member from supervising or managing lobbyists, and Livingston took full advantage of that liberty.

Six years later, the Livingston Group is ranked as the 12th largest non-law lobbying firm in Washington and had taken in almost $40 million from 1999 through the end of 2004.

The Livingston Group represents the special interests of three foreign governments, Turkey, Morocco and the Cayman Islands. They have paid him $11 million from 2000 through 2004, with $9 million coming from Turkey.

Because Turkey is one of Livingston's oldest, largest and most loyal clients, Public Citizen analyzed two of his lobbying efforts on behalf of the Turkish government.

Livingston Lobbying Effort #1: $1 Billion Supplemental Appropriation for Turkey

In the spring of 2003, in the wake of U.S. hostility toward Turkey for its refusal to allow our troops to stage and operate from Turkish soil during the invasion of Iraq, a measure was introduced in Congress to delete a $1 billion supplemental appropriation for Turkey.

An examination of FARA records reveals that in the days prior to the supplemental vote, Livingston used his influence and connections to reach not only his former colleagues on Capitol Hill but also top executive-branch officials. Livingston and his staff contacted members and staff of the House Appropriations Committee, which he used to chair. They also reached out to staff or members of the House International Relations Committee, the Senate Appropriations Committee, the Senate Armed Services Committee and the House Ways and Means Committee. Livingston also contacted the foreign policy advisor to House Speaker Dennis Hastert (R-Ill.) and escorted the Turkish ambassador on a strategic trip to the Capitol.

But the lobbying blitz did not end with Congress. FARA records show that Livingston and his people contacted aides to Vice President Dick Cheney and an undersecretary of state for political affairs.

Livingston's contacts and his success in reaching key people became evident when a vote was taken on the amendment to kill the $1 billion supplemental appropriation on April 3, 2003. It was defeated 315 to 110. Turkey paid Livingston's firm $1.8 million in 2003.

Livingston Lobbying Effort #2: Fighting Against the Recognition of Armenian Genocide by Turkey

In 2003, a resolution was introduced in the House of Representatives that would have formally recognized the Armenian genocide that occurred between 1915 and 1923. Over 1.5 million Armenian men, women and children were slaughtered by the Ottoman Turks during that period. Turkey, a strong and militarily strategic U.S. ally, has always vehemently opposed recognition of the Armenian genocide.

Rep. Adam Schiff (D-Calif.), whose district has a high concentration of Armenian-Americans, introduced a resolution (H.R. 193) in 2003 calling for formal recognition of the genocide by the U.S. Congress. But, due in no small part to Turkey's main lobbyist Bob Livingston, the measure failed to get momentum.

But the stakes were raised in mid-July 2004 when Schiff unexpectedly said he intended to attach an amendment to the Foreign Operations Appropriations bill, which would have prohibited Turkey from using U.S. foreign aid money to lobby against a House resolution acknowledging the Armenian genocide.

The measure was largely symbolic because a ban on using U.S. aid for lobbying already existed, but Schiff acknowledged that his real purpose was to put the House on record as recognizing the Armenian genocide.

Upon learning of the Schiff amendment, FARA records show that the Livingston Group kicked into high gear. In two days of intense lobbying, the Livingston Group contacted members or key

staff in 20 House offices, including Speaker Hastert (R-Ill.) and House Majority Leader Tom DeLay (R-Texas). Livingston and his lobbyists also called Vice President Cheney's office, the National Security Council, the State Department, and an assistant secretary for the Defense Department.

Despite Livingston's lobbying efforts, Schiff's amendment survived an initial vote. On the day after the vote, FARA records show that Livingston personally contacted the offices of Cheney, Hastert and DeLay..

At about the same time, Hastert, DeLay and Majority Whip Roy Blunt (R-Mo.) issued a statement expressing their displeasure with the Schiff amendment and saying it would be killed in the conference committee.

Later Schiff said, "The Turkish lobby does have enormous power and influence. Unfortunately the House leadership has buckled under the pressure of Turkish lobbying."

The Campaign Contributions of a Super Lobbyist

Like many lobbyists along Washington's famed K Street corridor, Livingston opens his wallet for a substantial number of candidates and political action committees (PACs) engaged in key political races. And in doing so, he engages in what may be the most influential form of lobbying.

Public Citizen analyzed political contributions made by Livingston, his wife and his two PACs. Combined they contributed $503,449 to various candidates or their PACs from 2000 through 2004. Of that amount, Livingston and his wife Bonnie personally contributed a combined total of $157,600.

Livingston was also able to use nearly $316,000 in leftover campaign funds to buy access, spending $202,000 by the end of 2004.

Recommendations to Slow Down the Revolving Door

Public Citizen's investigation of congressional revolving doors indicates an urgent need to implement several reforms:

- **Extend the former members' cooling-off period to two years before they can begin lobbying.** This would effectively mean that former members would have to wait until the next term of Congress convenes before they could begin to personally lobby members and staff.

- **Include a prohibition on supervising lobbyists during the cooling-off period.** Existing rules only prohibit former members from directly contacting their former colleagues, posing no restrictions on supervisory activities or arm's length lobbying conducted by staff (often the former members' relocated congressional staffs). These liberties erode the value of the cooling-off period as a deterrent to overly cozy relationships between current and former members of Congress.

- **Revoke the special privileges that are afforded to former members of Congress.** These privileges, which include access to the House and Senate floor and to members-only gymnasiums and restaurants, should be revoked for any former member who becomes a registered lobbyist. This is the only way to ensure that a member turned lobbyist will not unfairly use these privileges for his clients' benefit.

- **Require members of Congress to disclose their employment negotiations.** While federal law prohibits employees of the executive branch from seeking future employment and simultaneously working on issues of interest to their potential employers, ethics rules on negotiating future employment are more lax for senators and their staff, and looser still for House members and staff. While both the Senate and House codes of ethics prohibit members and staff from receiving compensation in exchange for any favoritism in official actions, the rules effectively leave members to serve as their own arbiters of proper conduct.

- **Prohibit registered lobbyists from making, soliciting or arranging campaign contributions to those whom they lobby.** In the absence of a more specific disclosure system than currently exists, this ban should extend to all members of the houses of Congress lobbied. For example, if a person lobbies the Senate, that lobbyist should be banned from making contributions to all senators.

Congressional Revolving Doors

For many years, departing members of Congress have gravitated to the lobbying industry after leaving Capitol Hill, passing through the so-called revolving door. The journey for the departing members has been short and often very profitable.

Washington's lobbying shops have always been a good place for former lawmakers to capitalize on their associations and friendships with other members by selling their influence to those with deep pockets.

A new Public Citizen analysis of former members of Congress turned lobbyists going back to 1998 when lobbyist registration documents were first posted online, reveals the pervasiveness of the practice:

- Of the 198 members who left Congress since 1998 and are eligible to lobby, 43.4 percent ended up in the influence industry. [See Figure 1. Also, Appendix A contains a list of former members turned lobbyists, 1970-present.]

- While lobbying is the clear career choice for those leaving Capitol Hill, the trend skews higher among Republicans than Democrats. Of Republicans departing since 1998, 52 percent became lobbyists, as opposed to 33 percent of departing Democrats.

- Exactly half of the 36 departing senators since 1998 who were eligible to lobby ended up doing just that. Two-thirds (66.7 percent) of departing Republican senators entered the lobbying profession, which is twice the percentage (33.3 percent) of departing Democrats.

- In the House, 42 percent (68 out of 162) of departing representatives who were eligible to lobby, did so. Of the departed Republican representatives, 48.9 percent chose a lobbying career, which is considerably higher than the 32.4 percent of Democratic representatives who opted to lobby.

Figure 1: Departing Members of Congress Who Have Become Lobbyists, 1998-2004

	All	R (Both Houses)	D (Both Houses)	Senators	R Senators	D Senators	House Members	R Reps	D Reps
Former Members Eligible to Lobby[1]	198	112	86	36	18	18	162	94	68
Former Member Lobbyists	86	58	28	18	12	6	68	46	22
Pct. Who Became Lobbyists	43.4%	51.8%	32.6%	50.0%	66.7%	33.3%	42.0%	48.9%	32.4%

Source: Public Citizen's analysis of records filed with the Secretary of the Senate (Available at sopr.senate.org)
Note: This figure considers only those former members who are eligible to lobby. It excludes those who died in office, moved from one congressional house to another (i.e., House to the Senate), took a job in the executive branch during the course of their term that they have yet to relinquish, or who were incarcerated upon leaving.

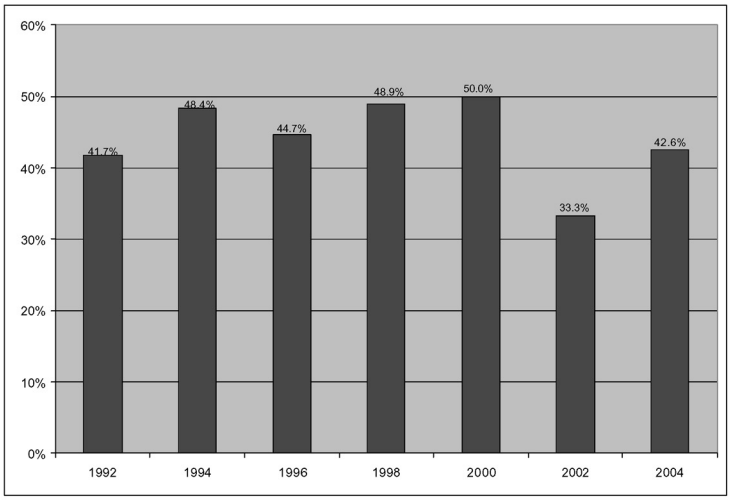
Percentage of Members Who Became Lobbyists by Year

Public Citizen analyzed the number of lawmakers turned lobbyists from departing classes dating back to 1992. The departing congressional class of 2000 had the highest percentage of members who became lobbyists, at 50 percent (25 of 50). [See Figure 2] In the election cycle of 2002, the percentage of eligible members who became lobbyists dropped dramatically, with only one third of departing members choosing to lobby.

The actual percentage of ex-members turned lobbyists for the departing classes of 1992-1996 was probably higher than indicated in the figure below because records of lobbying registrations filed with Congress date only to 1998. Thus, the figure does not reflect ex-members from the classes of 1992-1996 who took lobbying jobs but quit lobbying before 1998.

These findings suggest that the choice of a lobbying career after serving in office has remained remarkably common and steady over the last decade.

Figure 2: Percentage of Members of Congress Turned Lobbyists by Year of Departure, 1992-2004



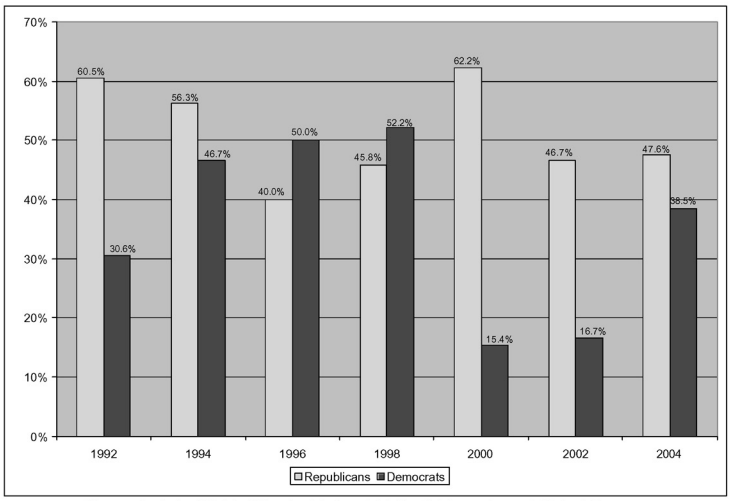
Source: Analysis of data from Public Citizen's lobbying database at www.lobbyinginfo.org

Party Breakdowns of Members-Turned-Lobbyists

In 2000, George W. Bush became president while the Republicans retained their control of both houses of Congress. In other words, it was a hostile landscape for lobbyists whose contacts were squarely in Democratic camps. This environment is reflected in a partisan breakdown of who became a lobbyist.

The percentage of Democrats who passed through the revolving door dropped dramatically for the class of 2000, when 62 percent of Republicans became lobbyists but only 15 percent of Democrats did so. [See Figure 3]

Figure 3: Percentage of Members of Congress by Party Who Became Lobbyists, 1992-2004



Source: Analysis of Public Citizen's data from lobbying database at www.lobbyinginfo.org

By comparison, in 1996 and 1998, about half (50 percent in 1996 and 52 percent in 1998) of the Democrats became lobbyists, slightly outnumbering their Republican counterparts (40 percent in 1996 and 46 percent in 1998).

Another problem for Democrats trying to land lobbying jobs may have come in the form of the "K Street Project." It was a plan pushed by anti-tax activist Grover Norquist and backed by House Majority Leader Tom DeLay (R-Texas). A primary aim of the project was to get as many Republicans as possible placed in Washington's K Street lobbying shops.[1]

One of the K Street Project's most notable efforts occurred in 1998 when DeLay and House Speaker Newt Gingrich (R-Ga.) held up a vote on intellectual property legislation, in part, to punish the Electronics Industry Association (EIA) for planning to hire former Democrat Rep. David McCurdy (D-Okla.) to run the group. The EIA had extensively lobbied for passage of the copyright measure.[2]

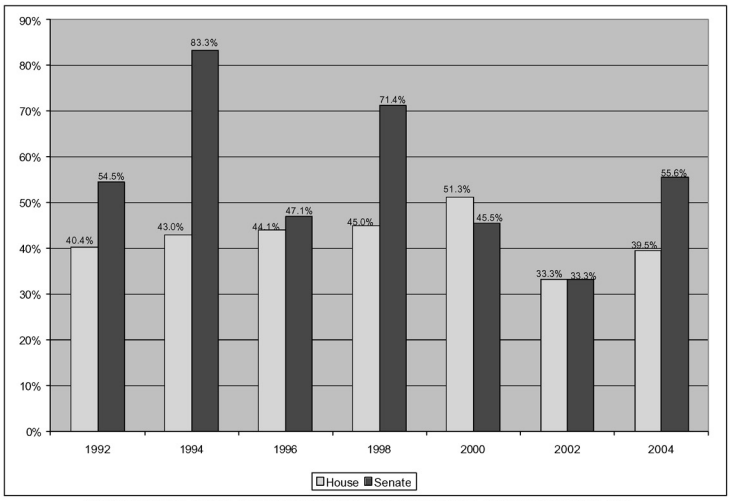
After investigating the incident, the House ethics committee sent DeLay a private letter of reprimand, effectively admonishing him for heavy-handed tactics.

The Republican advantage in the percentage who became lobbyists moderated slightly in 2002 and moved close to parity in 2004.

House of Representatives vs. the Senate

Since 1992, a higher percentage of departing senators have become lobbyists than their House counterparts except for the departing class of 2000. [See Figure 4]

Figure 4: Members of Congress Turned Lobbyists in House v. Senate, 1992-2004



Source: Analysis of data from Public Citizen's lobbying database at www.lobbyinginfo.org

The biggest gap between departing senators who became lobbyists and their House counterparts occurred in 1994 when 83 percent of departing senators became lobbyists while only 43 percent of Representatives chose to work on K Street.

In 2002, the percentage of departing members from both houses was the same, one-third entered the lobbying profession.

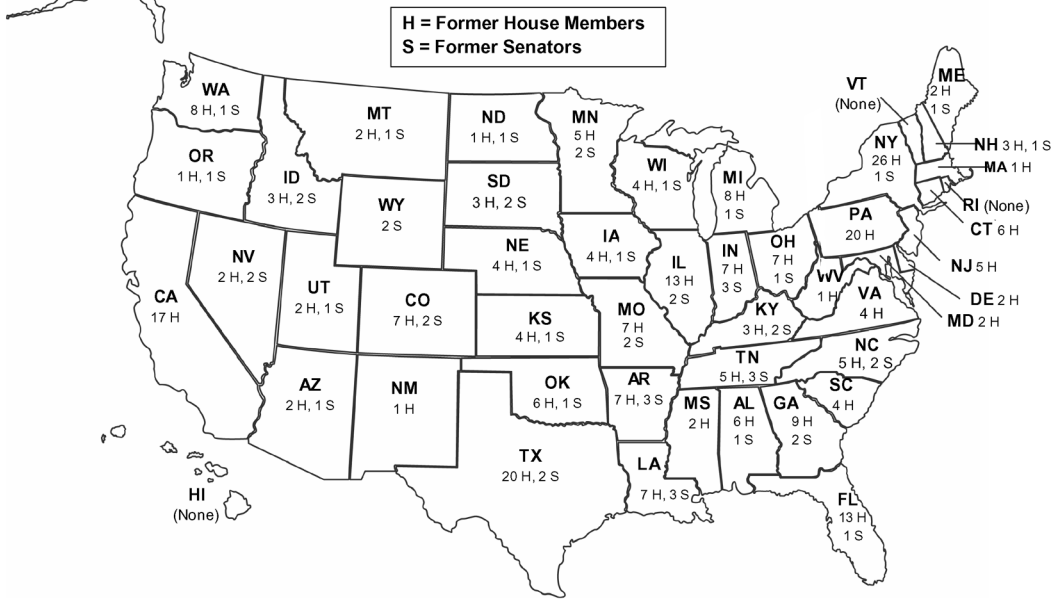
State by State Breakdown of Members-Turned-Lobbyists

Public Citizen analyzed the number of departing members of Congress from each state from 1970 to 2004. Almost every state has at least a handful of former lawmakers who have worked the halls of the nation's capitol as registered lobbyists. [See Figure 5 and Appendix A for a state-by-state listing of members-turned-lobbyists]

The top six states in terms of numbers of former members of Congress who have gone to work for the influence industry are:

- New York: 26 Representatives, 1 Senator
- Texas: 20 Representatives, 2 Senators
- Pennsylvania: 20 Representatives
- California: 17 Representatives
- Florida: 13 Representatives, 1 Senator
- Illinois: 13 Representatives, 2 Senators

Figure 5:
Number of Former Members of Congress Turned Lobbyists, 1970 – 2004
(See Appendix A for a state – by – state listing of these individuals)



A Case Study: Super-Lobbyist Bob Livingston

To spotlight the easy manner in which members of Congress can turn their tenures on Capitol Hill into lucrative lobbying careers, Public Citizen did an extensive examination of one federal lawmaker-turned-lobbyist.

The story of super-lobbyist Bob Livingston is a story of how legislative power can be translated into personal financial fortune by taking a very short spin through the revolving door that connects Congress and the federal lobbying industry.

In six short years, former House Appropriations Committee Chairman Bob Livingston (R-La.) went from being a $136,000 a year congressman to serving as the leading rainmaker for a lobbying shop that has pulled in almost $40 million. The Livingston Group is ranked as the 12th largest non-law firm lobby shop in Washington.[3]

By analyzing Livingston's annual filings under the Lobbying Disclosure Act (LDA) and the Foreign Agents Registration Act (FARA), Public Citizen charted the growing revenues of Livingston's company, The Livingston Group.

Livingston's filings under FARA provide a rare glimpse into how a high-powered and well-connected Washington lobbyist is able to navigate the political bureaucracy on behalf of foreign governments who have hired Livingston and his associates to protect their own special interests.

In 2004, the Livingston Group generated $3 million in fees by representing foreign governments. Only two other Washington lobbying firms brought in more by representing foreign nations.[4]

Background

Three days before Livingston resigned from Congress, on Feb. 25, 1999, he told reporters, "I just have to worry about the next paycheck."[5]

But if Livingston actually did worry about his paycheck, it was not for very long. Since leaving Congress, he has built an extremely lucrative lobbying business that allows him to cash in on relationships with former colleagues on Capitol Hill and in the executive branch.

Livingston gave his resignation speech on the floor of the House of Representatives on a Thursday. On the following Monday, he started the Livingston Group. In its first year of operation, the firm pulled in $1.1 million.[6]

Livingston's firm managed to make more than $1 million in its first year despite the one-year cooling period which bans former lawmakers from lobbying their former colleagues. The ban does not prohibit former members from supervising lobbyists.

When asked in 1999 about his new career, the former Louisiana congressman was quick to concede that he does not "mind making a little bit more money,"[7] which is good, since "a little bit more money" does not come close to describing the way Livingston's earnings have climbed.

A review of lobbying disclosure statements reveals that the Livingston Group's client list and its total collection of fees have soared over the years. Over the past six years, it has taken in $26.1 million from U.S. clients alone. [See Figure 6 and Appendix B for a complete list of Livingston's clients and the amount they paid]

When one adds in the lobbying revenues of two other Livingston lobbying firms and an additional $11 million collected from foreign governments, Livingston has taken in lobbying revenues of $39.5 million in the six years he has been in business. While Public Citizen does not know how much Livingston pays himself, it is likely considerably more than he was making as a federal lawmaker.

Figure 6: Lobbying Revenue for All Livingston Lobbying Businesses and From Foreign Clients, 1999-2004

Year	The Livingston Group	Livingston-Solomon	Livingston-Moffett Global	Foreign Clients	Total
1999	$1,140,000	-	-	-	$1,140,000
2000	$3,080,000	-	-	$1,800,000	$4,880,000
2001	$3,380,000	-	$340,000	$1,800,000	$5,520,000
2002	$3,780,000	$600,000	$705,000	$1,800,000	$6,885,000
2003	$6,660,000	$360,000	$340,000	$2,800,000	$10,160,000
2004	$8,080,000	-	-	$2,807,688	$10,887,688
Total	**$26,120,000**	**$960,000**	**$1,385,000**	**$11,007,688**	**$39,472,688**

Source: Public Citizen analysis of records filed with the Secretary of the Senate (Available at sopr.senate.org), and FARA records filed with the Justice Department.

Livingston abruptly left Congress because of a scandal that he said would adversely affect his ability to work on Capitol Hill. Yet, that scandal does not appear to have diminished his ability to make a successful transition into the influence industry.

During his farewell speech on the floor of the House, Livingston summed up his 22 years in Congress in part, by referring vaguely to "a few failures" and "a few moments of heartache."[8] One of those "moments" occurred at the very end of Livingston's congressional career when self-described "smut peddler" Larry Flynt exposed the fact that Livingston had been engaged in extra-marital affairs.

The revelation could not have come at a worse time for Livingston, as Congress was embroiled in the controversial impeachment of President Bill Clinton following his sexual liaisons with intern Monica Lewinsky.

In the midst of the scandal, Flynt had taken out an advertisement in the *Washington Post*, promising $1 million for credible information about the adulterous dealings of federal lawmakers. Livingston was caught in Flynt's sweep, when the publisher learned of some infidelities in the congressman's past.

Coming at a different time, there is a possibility Livingston might have weathered the storm of scandal, but not in early 1999.

Not only was the House about to vote on articles of impeachment, but the embattled Rep. Newt Gingrich (R-Ga.) had resigned as speaker and Livingston had been named as his successor.

After weighing what to do, Livingston addressed his colleagues, "I was prepared to lead our narrow majority as speaker, and I believe I had it in me to do a fine job. But I cannot do that job or be the kind of leader that I would like to be under current circumstances. So, I must set the example that I hope President Clinton will follow. I will not stand for speaker of the House on Jan. 6."[9]

Clinton stayed and Livingston left only to return a short time later as one of Washington's most successful and best connected lobbyists.

Based on the success of the Livingston Group, it appears that a scandal that can bring down a member of Congress is quickly forgotten on the other side of the revolving door that spins at a rapid rate between Congress and the lobbying industry.

Some might have thought that Livingston would have rejected a lobbying career to avoid the obvious criticism that he was cashing in on his two decades on the Hill by selling his influence to special interests. But Livingston is unapologetic. "Everybody in America is a special interest," he said. "And every one of us has a right to have their voice heard."[10]

While everyone has a right to be heard, few individuals can afford the cost of high-priced lobbying needed to raise one's volume to a level that can be heard on Capitol Hill. Yet corporations, associations and even foreign governments can make certain their words are heard by hiring high-priced lobbyists like Livingston. "We're so darn busy," Livingston told the *Wall Street Journal* only a year after he started the Livingston Group.[11]

Livingston's corporate clients have included Oracle, Northrop Grumman, and Raytheon, some of the largest and most powerful corporations in the country. [See Appendix B] His foreign client roster includes the governments of Turkey, Morocco and the Cayman Islands.

Livingston frequently cashes in on his service as the chairman of the powerful House Appropriations Committee. Though it does not carry the clout of the title, "Speaker" it is still considered one of the most influential assignments in the House of Representatives. It is also a position that has served him well as a Washington lobbyist.

"Nobody understands the appropriation process better than me," Livingston told the *Washington Post*. "If we understand the process and can get through the front door, that's primarily the reason why clients hire me."[12]

Another reason clients hire Livingston is that he proved his value to many of them while serving as chairman.

When he left Congress to become a lobbyist, one of the first clients he signed on was Litton Avondale Industries Inc., a California defense contractor that operated the Avondale shipyard in

New Orleans. As committee chairman, Livingston used his influence to steer defense contracts to Avondale.[13]

In January, 2000, just after Livingston formed his lobbying group, he told the *Wall Street Journal,* "I just made a 10-day run through Louisiana, trying to see if I could entice folks we had been working for over the years to hire us."[14]

Livingston's trip was apparently successful, because two-thirds of the 30 clients whom Livingston reported representing at the time came from Louisiana. The list included International Shipholding Corp., JRL Enterprises Inc., which made educational software, and Tulane University in New Orleans.[15]

Livingston's Other Lobbying Shops

In January 2002, the Livingston Group took over the lobbying firm of former House Rules Committee Chairman Jerry Solomon (R-N.Y.). Solomon died in October 2001.[16]

In the two years before Livingston-Solomon was fully absorbed by the Livingston Group, the firm took in $960,000. [See Figure 7]

Figure 7: Lobbying Fees Paid to Livingston-Solomon, LLC

Client Company	2002	2003	Total
Energy East Corp.	$80,000	$20,000	$100,000
Catskill Mountain Federation	$40,000	-	$40,000
Kwon Ho Sung	$80,000	$60,000	$140,000
Natl Milk Producers Federation	$80,000	$20,000	$100,000
United to Secure America	$200,000	$100,000	$300,000
Hoverround Corp.	$40,000	$120,000	$160,000
Irish Cultural And Sports Centre	$60,000	$20,000	$80,000
MIC Industries	$20,000	$20,000	$40,000
Total	**$600,000**	**$360,000**	**$960,000**

Source: Public Citizen analysis of records filed with the Secretary of the Senate. (Available at sopr.senate.org)

Yet another lobbying enterprise formed by Livingston was Livingston-Moffett Global Consultants LLC, which he formed with former Rep. Toby Moffett (D-Conn.) in August 2000.[17]

The union of apparent political opposites like Moffett and Livingston is not uncommon in the lobbying world. It allows the firms to solicit business regardless of which party holds the White House or who is in the majority in Congress.

At the time of its formation, Livingston told the Baton Rouge *Sunday Advocate,* "The Livingston group is primarily Republican.... The Livingston-Moffett firm may have something of a Democratic tilt."[18]

For the three years that Livingston-Moffett filed separate lobbying disclosure statements, it took in almost $1.4 million in lobbying fees. [See Figure 8]

Figure 8: Lobbying Fees Paid to Livingston-Moffett Global, LLC

Client Company	2001	2002	2003	Total
Caithness Energy LLC	$10,000	$200,000	$100,000	$310,000
Pharmacia	$100,000	$200,000	$80,000	$380,000
Take the Field Inc.	$40,000	-	-	$40,000
Africa American Inst.	$60,000	$80,000	$20,000	$160,000
African Virtual Univ. Intl.	$40,000	$80,000	$60,000	$180,000
Streaming Text	$20,000	-	-	$20,000
Boston Autopart	$10,000	-	-	$10,000
Collegiate Funding Services	$60,000	$120,000	$40,000	$220,000
MIC Industries	-	$25,000	-	$25,000
Collis Assoc.	-	-	$40,000	$40,000
Total	**$340,000**	**$705,000**	**$340,000**	**$1,385,000**

Source: Public Citizen analysis of records filed with the Secretary of the Senate. (Available at sopr.senate.org)

Representing Foreign Governments

Among the Livingston Group's most lucrative contracts are some that do not show up on lobby disclosure records filed with Congress. Since 2000, Livingston has taken in more than $11 million from foreign governments and the vast majority of that money, $9 million, has come from Turkey, with $1 million more each from Morocco and the Cayman Islands. [See Figure 9] Livingston's representation of these foreign governments brought in a quarter of his company's annual revenue in 2003 and 2004.

In 2005, it was reported that Livingston picked up yet another foreign government client. Azerbaijan has signed a $300,000 a year contract with the Livingston Group.[19]

Timur Solylemez, the congressional liaison and first secretary of the Turkish embassy made it clear why the Livingston Group has his government's lobbying business. "I don't need to tell you who Mr. Livingston is, and having someone of his stature is obviously very helpful," Solylemez said.[20] He added that it is Livingston's connections and former experience on the Hill that makes him a valuable resource. "His presence is a powerful one in Washington. With friends and allies like that, obviously your agenda becomes less difficult to pursue," he said.[21]

Livingston told *Influence* magazine last year, "There are a lot of ways to advance the cause of a particular country through contact with members of Congress and people in the administration, the Pentagon, various agencies of the government."[22]

Figure 9: Lobbying Fees Paid to the Livingston Group by Foreign Governments

Year	Turkey	Morocco	Cayman Islands	Total
2000	$1,800,000	-	-	$1,800,000
2001	$1,800,000	-	-	$1,800,000
2002	$1,800,000	-	-	$1,800,000
2003	$1,800,000	$500,000	$500,000	$2,800,000
2004	$1,800,000	$500,000	$507,688	$2,807,688
Total	**$9,000,000**	**$1,000,000**	**$1,007,688**	**$11,007,688**

Source: Public Citizen analysis of records filed with the Justice Department in Compliance with the Foreign Agent Registration Act (FARA).

Those observations are borne out by the Livingston Group's Foreign Agent Registration Act (FARA) filings. Under FARA, lobbyists representing foreign governments are required to file disclosure forms with the Justice Department. These forms require lobbyists to list their activities in far more detail than they must provide for their domestic clients.

The firm's filings reveal not only the extensive lobbying for the government of Turkey, but also provide a fascinating glimpse inside the typically closed workings of one of Washington's most powerful lobbying shops.

$1 Billion Supplemental Appropriation for Turkey

How he helped defeat a Republican amendment in the spring of 2003 that would have eliminated $1 billion in U.S. aid to Turkey illustrates how much influence Livingston still wields on the Hill and how he uses his contacts to build support, or in this case opposition, to a particular legislative measure. [See Figure 10]

In 2003, Republicans and many others were angry over Turkey's refusal to allow U.S. troops to stage and operate from their country during the invasion of Iraq. The Turkish parliament, dominated by the governing Justice and Development Party (AKP), refused the U.S. permission to open a northern front to Iraq through southeast Turkey.

The opportunity for Congress to convey its anger toward Turkey arose on April 3, 2003, when an emergency spending bill came up for a vote. Rep. Randy "Duke" Cunningham introduced an amendment (H. AMDT. 32 to H.R. 1559) to delete the $1 billion intended for Turkey.

"I have personally witnessed the actions of other countries that caused the loss of many of my friends." Cunningham said on the house floor. "The insurgency today would be less," had U.S. troops had access to Iraq from the north, since the resulting thrust of the U.S. invasion through southern Iraq had enabled many insurgents to evade capture in the north.

Figure 10: Livingston-Moffett Global Lobbying Activity during Congressional Action on $1 Billion Supplemental Appropriation for Turkey (H. AMDT. 32 to H.R. 1559)

March 26, 2003

- Contacted the following people:
  - Rep. Mike Rogers (R - Ala.), House Armed Services Committee.
  - John Magill, staffer for Rep. Wally Herger (R - Calif.), House Ways and Means Committee.
  - Elise Finley, staffer for Rep. John Shadegg (R - Ariz.), House Homeland Security Committee.
  - Fran McNaught, staffer for Rep. Jim Kolbe (R - Ariz.), Chairman of the House Appropriations Foreign Operations Subcommittee.
  - Claire Coleman, staffer for Rep. Nita Lowey (D - N.Y.), House Homeland Security Committee.
  - Hal Weatherman, staffer for Rep. Sue Myrick (R - N.C.), House Rules Committee.
  - Charlie Flickner, staffer for House Appropriations Committee.

March 27, 2003

- Contacted Joe Woods, aide to Vice President Cheney.
- Accompanied the Turkish Ambassador to a meeting with Rep. Tom Davis (R - Va.).

March 29, 2003

- Contacted Chris Walker, foreign policy advisor to Hastert (R - Ill.).

March 31, 2003

- Contacted the following people:
  - Marc Grossman, undersecretary for political affairs for the State Department and former ambassador to Turkey.
  - Chris Walker, foreign policy advisor to Hastert.
  - Tom Mooney, Republican staff director for the House International Relations Committee.
  - John Blazey, staffer for the House Appropriations Committee.
  - Paul Grove, staffer for the Senate Appropriations Committee.
  - Joe Woods, aide to Vice President Cheney.

April 1, 2003

- Contacted Sen. James Inhofe (R - Okla.), member of the Senate Armed Services Committee, concerning meeting with Turkish Ambassador.

April 2, 2003

- Accompanied the Turkish Ambassador to meeting with the following people:
  - Rep. Ander Crenshaw (R – Fla.), House Appropriations Foreign Operations Subcommittee.
  - Rep. Mike Rogers (R – Ala.), House Armed Services Committee.
  - Rep. Roger Wicker (R – Miss.), House Appropriations Committee.
  - Rep. David Hobson (R – Ohio), House Appropriations Committee.

April 3, 2003

- Contacted Paul Grove, staffer for the Senate Appropriations Committee.
- Amendment banning supplemental appropriation for Turkey is introduced (H.AMDT.32 to H.R. 1559)
- Amendment is defeated 315 to 110.

Source: Public Citizen's analysis of records filed with the Justice Department in Compliance with the Foreign Agent Registration Act (FARA).

Defense Secretary Donald Rumsfeld confirmed the strategic significance of Turkey's cooperation during an interview on Fox News earlier this year. He said, "Given the level of the insurgency today, two years later, clearly if we had been able to get the 4th Infantry Division in from the north, in through Turkey, more of the Iraqi, Saddam Hussein, Baathist regime would have been captured or killed."[23]

Livingston's ability to cash in on his status as a former member of Congress was not only evident in the days preceding the vote on the $1 billion supplemental appropriation to Turkey but also on the day the vote was recorded.

Just before the vote, Livingston arranged for a delegation of Turkish officials to stand just off the House floor where they would meet his former colleagues as they stopped by to pay their respects to the former chairman of the House Appropriations Committee.[24]

The effectiveness of Livingston's strategy was made clear by the reaction of Rep. Zach Wamp (R-Tenn.). Wamp said he was uneasy about rewarding Turkey in the context of its lack of strategic support for U.S. military action in Iraq, but he said seeing Bob Livingston with the Turks made a difference.[25]

Livingston was instrumental in securing Wamp's 1995 appointment to the Appropriations Committee.[26]

Wamp told the *Washington Post*, "There's no question that's why I slowed down to talk to them and greet them is because they're with Bob Livingston. I'm more willing to hear them out because he took them on, and that gives them credibility."[27]

In the end, Wamp was one of 315 House members who voted against the amendment, meaning that Livingston's client, the government of Turkey, got its $1 billion supplemental appropriation.

Fighting Against the Recognition of Armenian Genocide by Turkey

Another example of Livingston cashing in on his connections with Congress and the executive branch occurred during the 108th congressional session, again while he was representing Turkey.

In 2003, a resolution was introduced in the House that would have formally recognized the Armenian genocide that occurred between 1915 and 1923. Over 1.5 million Armenian men, women and children were slaughtered by the Ottoman Turks during that pre-World War I period.

Turkey, a strong and militarily strategic U.S. ally, has always vehemently opposed recognition of the Armenian genocide.

Rep. Adam Schiff (D-Calif.), whose district has a high concentration of Armenian-Americans, introduced a resolution (H.R. 193) in 2003 calling for formal recognition of the genocide by the U.S. Congress. But, due in no small part to Turkey's main lobbyist, the Livingston Group, the measure failed to get momentum.

Even though there was never much chance of the measure passing, the Livingston Group did discuss the Turkish-Armenian issue with various high-ranking officials in the executive branch,

including Vice President Cheney's office, in the spring of 2004, around the time of the 89th anniversary of the Armenian genocide, which is commemorated on April 24. [See Figure 11]

Figure 11: Initial Lobbying by the Livingston Group during House Consideration of an Amendment Acknowledging the Armenian Genocide

March 8, 2004
- Exchanged e-mail with Rep. Richard Baker (R-La.).
- Spoke via telephone with Larry Silverman, the deputy director of southern European affairs for the State Department.

March 18, 2004
- Exchanged e-mail with James Marrs, aide to Vice President Cheney.

April 12, 2004
- Spoke via telephone with Lisa Heald, the country director for Turkey in the office of the Secretary of Defense.

April 15, 2004
- Spoke via telephone with Larry Silverman, the deputy director of southern European affairs for the State Department.

April 22, 2004
- Spoke via telephone with David McCormick, the Turkey desk officer for the State Department.

April 23, 2004
- Spoke via telephone with the following people:
  - Douglas Hengel, the director of the State Department's office of southern European affairs.
  - Matt Bryza, the director of European and Eurasian Affairs for the National Security Council.

June 3, 2004
- Exchanged e-mail with James Marrs, aide to Vice President Cheney's office.

Source: Public Citizen's analysis of records filed with the Justice Department in Compliance with the Foreign Agent Registration Act (FARA).

But the stakes became much higher for Livingston on July 14, when Schiff unexpectedly let it be known that he intended to attach an amendment to the Foreign Operations Appropriations bill. His amendment (H. AMDT. 709 to H.R. 4818) would have prohibited Turkey from using U.S. foreign aid money to lobby against a House resolution acknowledging the Armenian genocide.

The measure was largely symbolic because a ban on using U.S. aid for lobbying already existed, but Schiff acknowledged that his real purpose was to put the House on record as recognizing the Armenian genocide.[28]

Upon learning of the Schiff amendment, FARA records show that the Livingston Group kicked into high gear. Livingston and his lobbyists called Vice President Cheney's office, the National Security Council, the State Department and an assistant secretary of Defense. [See Figure 12]

On Capitol Hill, Livingston and his associates sent e-mails and faxes to DeLay, Hastert and a deputy parliamentarian for the House.

The call to the parliamentarian's office is interesting since the office is seldom the recipient of outreach efforts by lobbyists. A Democratic congressional staffer, who asked Public Citizen not to reveal his identity, said it is very unusual for a lobbyist to contact the parliamentarian's office and the call may help explain why Schiff had a difficult time getting the language of his amendment through the House Parliamentarian.

In two days of intense lobbying, the Livingston Group contacted either members or key staffers in 20 House offices in an effort to kill Schiff's amendment.

As massive as Livingston's lobby effort was, Schiff's amendment survived an initial vote. The Livingston Group had lost a legislative battle, but it was not about to admit defeat. It was merely time for Livingston himself to reach out to some of his former congressional colleagues.

The Foreign Operations Appropriation bill was passed by the House on July 15, 2004. On that same day, FARA records show that a Livingston staffer e-mailed an Hastert aide. On the following day, FARA records show that Livingston personally contacted Hastert's and DeLay's office and the office of Vice President Cheney.

Around this same time Hastert, DeLay and Majority Whip Roy Blunt (R-Mo.) issued a joint statement saying:

> "We are strongly opposed to the Schiff Amendment to the Foreign Operations Appropriations bill, and we will insist that conferees drop that provision in conference. We have contacted the Bush Administration, and they have indicated their strong opposition to the amendment. We have also conveyed our opposition to Chairman [Jim] Kolbe (House Appropriations Foreign Operations Subcommittee) and he has assured us that he will insist on it being dropped in the conference committee."[29]

Schiff later said, "The Turkish lobby does have enormous power and influence. Unfortunately, the House leadership has buckled under the pressure of Turkish lobbying."[30]

After hearing the joint statement of the House leadership, Rep. Frank Pallone, Jr. (D-N.J.) wrote a letter to Hastert, "I disagree with your statement on a number of levels. First and foremost, the Schiff amendment put the House on record that it would no longer tolerate Turkey's intimidating lobbying efforts towards any recognition of the Armenian Genocide."[31]

Not surprisingly Pallone's letter had no affect on the House leadership, nor did a letter signed by 60 lawmakers asking Hastert to reconsider his position opposing the Schiff Amendment.[32]

Figure 12: Lobbying by the Livingston Group on Amendment to Ban Use of U.S. Aid Money to Lobby Against Recognition of the Armenian Genocide (H. AMDT. 709 to H.R. 4818)

July 14, 2004

- Spoke with the following people via telephone:
  - Matt Bryza, director of European and Eurasian affairs, National Security Council.
  - Craig Albright, legislative director for Rep. Joe Knollenberg (R – Mich.), House Appropriations Committee.
  - Harry Glenn, chief of staff for Rep. Bill Young (R – Fla.), chairman of the House Appropriations Committee.
  - Jeff Miles, press secretary for Rep. Ed Whitfield (R – Ky.), House Energy and Commerce Committee
  - Rob Neal, appropriations associate for Rep. George Nethercutt (R – Wash.), House Appropriations Committee.
  - John Shank, staff assistant for the House Appropriations Foreign Operations and Export Financing Subcommittee.
  - Greg Facchiano, legislative director for Rep. David Vitter (R – La.), House Appropriations Foreign Operations and Export Financing Subcommittee.
  - Daniel Keniry, deputy assistant to the president for legislative affairs, office of the Vice President (Left a voice mail message).
  - Rachael Leman, deputy policy director for the House Rules Committee.
  - Mark Murray, staff assistant for the House Appropriations Committee.
  - Bob Van Wicklin, chief of staff for Rep. Amory Houghton (R – N.Y.), House International Relations Committee.
  - Larry Silverman, deputy director of southern European affairs for the State Department.
  - Lisa Heald, country director for Turkey in the office of the secretary of Defense.
  - Dana O'Brien, legislative director for Rep. Ike Skelton (R – Mo.), House Armed Services Committee.
  - Idil Oyman, press secretary for Rep. Philip English (R – Pa.), House Ways and Means Committee.
  - Todd Sommers, legislative assistant for Rep. J.C. Hayworth (R – Ariz.), House Ways and Means Committee.
  - Rep. Jim Kolbe (R – Ariz.), chairman of the House Appropriations Foreign Operations and Export Financing Subcommittee.
  - Christopher Walker, assistant for policy for Hastert.
  - Johnnie Kaberle, policy advisor for House Majority Whip Roy Blunt (R – Mo.).
  - Billy Pitts, majority staff director, House Rules Committee.
  - Amy Flachbart, chief of staff for Rep. George Nethercutt (R – Wash.), House Appropriations Committee.
  - John Sullivan, deputy parliamentarian of the House of Representatives.

- Exchanged e – mails with the following people:
  - Jeff Miles, press secretary for Rep. Ed Whitfield (R – Ky.), House Energy and Commerce Committee.
  - Thomas Mooney, general counsel for the House International Relations Committee.
  - Brett Shogen, senior advisor and director of national security policy for DeLay.
- Sent faxes to the following people:
  - Hastert.
  - John Sullivan, deputy parliamentarian for the House of Representatives.

(Continued on following page)

Figure 12 Continued

July 15, 2004

- Sent a fax to Brian Diffell, policy advisor to House Majority Whip Blunt (R – Mo.).
- Exchanged e – mail with the following people:
  - John Shank, staff assistant to the House Appropriations Foreign Operations and Export Financing Subcommittee.
  - Powell Moore, assistant secretary of Defense for legislative affairs.
  - John McGregor, senior legislative assistant to Rep. Solomon Ortiz (D – Texas), House Armed Services Committee.
  - Blair Milligan, legislative assistant to Rep. Mike McIntyre (D – N.C.), House Armed Services Committee.
- Spoke via telephone with the following people:
  - Jeff Miles, press secretary for Rep. Ed Whitfield (R – Ky.), House Energy and Commerce Committee.
  - Jean LaPlace, senior policy advisor to Rep. William Jefferson (D – La.), House Ways and Means Committee.
  - Alan Makovsky, aide for the House International Relations Committee.
  - Scott Palmer, chief of staff, Office of Speaker Dennis Hastert (R – Ill.).

Source: Public Citizen analysis of records filed with the Justice Department in Compliance with the Foreign Agent Registration Act (FARA).

On Nov. 20, 2004, the appropriations bill (H.R. 4818) passed both houses of Congress, with the Schiff amendment noticeably absent.

The Livingston Group collected $1.8 million in lobbying fees from the Turkish government for its work in 2004. [33]

Livingston's Campaign Contributions

No one knows more about the value of campaign contributions and the influence it can buy than a successful congressman like Livingston, a veteran of 10 House elections. But now as a lobbyist, Livingston is on the giving end of the equation.

Like most lobbyists along Washington's famed K Street corridor, Livingston opens his wallet for a substantial number of candidates and political action committees (PACs) engaged in key political races.

Since forming the Livingston Group six years ago, the former congressman, his wife and his two PACs have made political contributions totaling $503,449. [See Figure 14]

Between 2000 and 2004, Livingston and his wife, Bonnie, personally contributed a combined total of $157,600 to candidates and various PACs, including a total of $100,000 to Livingston's own PACs, which in turn made contributions to various candidates and political action committees. [See Appendix C]

Figure 13: Campaign Contributions by Bob Livingston, His Wife (Bonnie) and His Two PACs, 2000-2004

Contributions From Bob or Bonnie Livingston	Contributions From Friends of Bob Livingston PAC	Contributions From Livingston Group PAC	Total
$157,600	$201,868	$243,981	$503,449*

Source: Public Citizen analysis of data supplied by the Center for Responsive Politics
*This figure does not include $100,000 in contributions made by Bob Livingston to his own PACs, since that amount is reflected in contributions made by his PACs to candidates.

Rather conveniently, Livingston was also able to use nearly $316,000[34] from his leftover campaign funds to buy access, spending $202,000 by the end of 2004.

Proposals to Limit the Congressional Revolving Doors

Reforms are needed to ensure that members of Congress turned lobbyists cannot use the honors, privileges and access the public bestowed upon them for the benefit of their clients. Public Citizen recommends the following:

Extend the Cooling-Off Period

Currently, former members of Congress must wait one year from the time they leave office until they can personally make lobbying contacts with their former colleagues. It is the so-called cooling-off period, which is designed to reduce a government official's ability to leverage networks and information gained while in public service for personal benefit or the benefit of clients.

This restriction should be extended to two years, which is the same length of time as a congressional term. This would effectively mean that a former member would have to wait until the next term of Congress convenes before he or she could begin to personally lobby members and staff.

It would effectively limit a former member's ability to immediately cash in on the influence acquired while serving in Congress.

Public Citizen's analysis of Bob Livingston's lobbying revenues shows that during his cooling-off period, he brought in respectable revenues of $1.1 million, but in the following year when there was no prohibition but still the same members of Congress, staff and committee composition when Livingston was in office, his revenues more than quadrupled to $4.8 million.

Include the Supervision of Lobbyists During the Cooling-Off Period

When Livingston was forced to wait a year before he could lobby his former colleagues, it did not mean that he could not direct or manage the activities of the other lobbyists under his employ. In other words, he could still lobby if he did so at an arm's length through his staff.

The fact that Livingston brought in more than $1 million in fees during his cooling-off period shows that his lobbying clients believed that his insider knowledge and connections still wielded influence on Capitol Hill, even if he did not make direct personal contact with his former colleagues.

Public Citizen supports a change in the cooling-off period to include "lobbying activities" by former members. Lobbying activities include any action taken in support of making a lobbying contact, including planning and preparation, research, and the supervision and management of other lobbyists. Such a change would eliminate a major loophole in the current prohibition against lobbying during the cooling-off period.

Revoke Special Access Privileges

Garnering connections and policy expertise is a natural consequence of legislative service. A number of perks currently being extended to former members of both houses of Congress, however, are not. Former members of Congress have special access to cloak rooms, an exclusive gymnasium and even the floor of the House and the Senate. It means that a member turned lobbyist has access that other lobbyists might only dream about, since face time with a member or staff is the stock-in-trade of lobbyists.

Public Citizen believes that once a former member registers to become a lobbyist, his or her special access should be immediately suspended and remain so while a lobbyist. This is the only way to ensure that a member turned lobbyist will not be able to unfairly use these privileges for personal benefit and the benefit of clients.

Require Full Disclosure of All Employment Negotiations

Public Citizen believes that members of Congress and their staff should be required to disclose their employment negotiations while in public service. While federal law prohibits executive branch employees from seeking future employment while working on issues of interest to their potential employers, ethics rules on negotiating future employment are more lax for members and staff of the Senate, and even looser for those of the House. Both the Senate and House codes of ethics prohibit members and staff from receiving compensation in exchange for any favoritism in official actions. To this end, the Senate and House rules advise members and staff to recuse themselves from official actions of interest to a prospective employer while job negotiations are underway. But that is about as far as congressional ethics currently go in regulating this conflict of interest, leaving the members and staffers themselves to serve as the arbiters of their ethics.

Ban Campaign Contributions by Lobbyists to Those Whom They Lobby

Registered lobbyists should be prohibited from making, soliciting or arranging campaign contributions to those whom they bbby. Since lobbyists direct their lobbying efforts at whole congressional bodies or executive agencies, this ban should extend to all members of the governmental agencies lobbied. This would mean that registered lobbyists would be prohibited from making campaign contributions to, or arranging fundraisers for, either candidates for Congress, or candidates for the executive branch, or both, depending on the scope of activities of the particular lobbyist.

As part of an influence-peddling arsenal, nearly all well-financed lobbyists make contributions on their own behalf to key officeholders, encourage their clients to make contributions, and organize fundraisers for these same officeholders. In a complaint filed with the FEC, Public Citizen documented the vociferous activities of one lobbyist, Mitch Delk of Freddie Mac, arranging fundraising events for officeholders and candidates. In the 2002 election cycle alone, Delk hosted 45 fundraising events for federal officeholders, candidates and party committees. More than half (24) of the fundraising events organized by Delk featured as a special guest Rep. Michael Oxley (R-Ohio), chair of the House Financial Services Committee which regulates Freddie Mac, and 19 of these events were held explicitly for the benefit of congressional members with oversight responsibility over Freddie Mac.

Appendix A: Former Members of Congress Turned Lobbyists, 1970-Present (Organized by State)

Lobbyist	State	Last Congress	Position and Term Length	Party
John Hall Buchanan	Alaska	96th	U.S. Rep. (R – Alaska), 1965 – 1980	R
Howard Wallace Pollock	Alaska	91st	U.S. Rep. (R – Alaska.), 1966 – 1970	R
Tom Bevill	Ala.	104th	U.S. Rep. (D – Ala.), 1967 – 1996	D
H.L. "Sonny" Callahan	Ala.	107th	U.S. Rep. (R – Ala.), 1985 – 2002	R
Bill Dickinson	Ala.	102nd	U.S. Rep. (R – Ala.), 1965 – 1992	R
William Jackson "Jack" Edwards	Ala.	99th	U.S. Rep. (R – Ala.), 1965 – 1984	R
Ben Erdreich	Ala.	102nd	U.S. Rep. (D – Ala.), 1983 – 1992	D
Ronnie Flippo	Ala.	101st	U.S. Rep. (D – Ala.), 1971 – 1990	D
Howell Heflin	Ala.	104th	U.S. Sen. (D – Ala.), 1979 – 1996	D
Dennis DeConcini	Ariz.	103rd	U.S. Sen. (D – Ariz.), 1977 – 1994	D
John Jacob Rhodes	Ariz.	102nd	U.S. Rep. (R – Ariz.), 1987 – 1992	R
Matthew Salmon	Ariz.	106th	U.S. Rep. (R – Ariz.), 1995 – 2000	R
Beryl Anthony	Ark.	102nd	U.S. Rep. (D – Ark.), 1979 – 1992	D
Bill Alexander	Ark.	102nd	U.S. Rep. (D – Ark.), 1969 – 1992	D
Ed Bethune	Ark.	98th	U.S. Rep. (R – Ark.), 1979 – 1984	R
Dale Bumpers	Ark.	105th	U.S. Sen. (D – Ark.), 1975 – 1998	D
Jay Dickey	Ark.	106th	U.S. Rep. (R – Ark.), 1993 – 2000	R
Asa Hutchinson	Ark.	107th	U.S. Rep. (R – Ark.), 1997 – 2002	R
Tim Hutchinson	Ark.	107th	U.S. Sen. (R – Ark.), 1997 – 2002; U.S. Rep. (R – Ark.), 1993 – 1996	R
David Pryor	Ark.	104th	U.S. Sen. (D – Ark.), 1979 – 1996; U.S. Rep. (D – Ark.), 1965 – 1972	D
William Baker	Calif.	104th	U.S. Rep. (R – Calif.), 1993 – 1996	R
Brian P. Bilbray	Calif.	106th	U.S. Rep. (R – Calif.), 1995 – 2000	R
James Corman	Calif.	96th	U.S. Rep. (D – Calif.), 1961 – 1980	D
Bill Dannemeyer	Calif.	102nd	U.S. Rep. (R – Calif.), 1979 – 1992	R
Ronald Dellums	Calif.	105th	U.S. Rep. (D – Calif.), 1971 – 1998	D
Calvin Dooley	Calif.	108th	U.S. Rep. (D – Calif.), 1991 – 2004	D
Vic Fazio	Calif.	105th	U.S. Rep. (D – Calif.), 1979 – 1998	D
Steven Kuykendall	Calif.	106th	U.S. Rep. (R – Calif.), 1999 – 2000	R
Richard Lehman	Calif.	103rd	U.S. Rep. (D – Calif.), 1983 – 1994	D
Mel Levine	Calif.	102nd	U.S. Rep. (D – Calif.), 1983 – 1992	D
William David Lowery	Calif.	102nd	U.S. Rep. (R – Calif.), 1981 – 1992	R
Dan Lungren	Calif.	100th	U.S. Rep. (R – Calif.), 1979 – 1988; 2005 – present	R
Ron Packard	Calif.	106th	U.S. Rep. (R – Calif.), 1983 – 2000	R
Leon Panetta	Calif.	103rd	U.S. Rep. (D – Calif.), 1977 – 1994	D
Jerry Patterson	Calif.	98th	U.S. Rep. (D – Calif.), 1975 – 1984	D
Frank Riggs	Calif.	102nd	U.S. Rep. (R – Calif.), 1991 – 1992	R
James Rogan	Calif.	106th	U.S. Rep. (R – Calif.), 1997 – 2000	R
Ben Nighthorse Campbell	Colo.	108th	U.S. Sen. (R – Colo.), 1993 – 2004; U.S. Rep. (D – Colo.), 1987 – 1992	R
Raymond Peter Kogovsek	Colo.	99th	U.S. Rep. (D – Colo.), 1979 – 1984	D

Lobbyist	State	Last Congress	Position and Term Length	Party
Scott McInnis	Colo.	108th	U.S. Rep. (R – Colo.), 1993 – present	R
Dan Schaefer	Colo.	105th	U.S. Rep. (R – Colo.), 1983 – 1998	R
Robert Schaffer	Colo.	107th	U.S. Rep. (R – Colo.), 1997 – 2002	R
Patricia S. Schroeder	Colo.	104th	U.S. Rep. (D – Colo.), 1973 – 1996	D
Timothy Wirth	Colo.	102nd	U.S. Sen. (D – Colo.), 1987 – 1992; U.S. Rep. (D – Colo.), 1975 – 1986	D
Gary Franks	Conn.	104th	U.S. Rep. (R – Conn.), 1991 – 1996	R
Barbara Kennelly	Conn.	105th	U.S. Rep. (D – Conn.), 1981 – 1998	D
Anthony Moffett	Conn.	97th	U.S. Rep. (D – Conn.), 1975 – 1982	D
Bruce Morrison	Conn.	101st	U.S. Rep. (D – Conn.), 1983 – 1990	D
William Ratchford	Conn.	98th	U.S. Rep. (D – Conn.), 1979 – 1984	D
Ronald Sarasin	Conn.	95th	U.S. Rep. (R – Conn.), 1973 – 1978	R
Pete duPont	Del.	94th	U.S. Rep. (R – Del.), 1971 – 1976	R
Thomas B. Evans	Del.	97th	U.S. Rep. (R – Del.), 1977 – 1982	R
James Bacchus	Fla.	103rd	U.S. Rep. (D – Fla.), 1991 – 1994	D
L.A. "Skip" Bafalis	Fla.	97th	U.S. Rep. (R – Fla.), 1973 – 1982	R
Dante Fascell	Fla.	102nd	U.S. Rep. (D – Fla.), 1955 – 1992	D
Tillie K. Fowler	Fla.	106th	U.S. Rep. (R – Fla.), 1993 – 2000	R
Sam Melville Gibbons	Fla.	104th	U.S. Rep. (D – Fla.), 1963 – 1996	D
Bill Grant	Fla.	101st	U.S. Rep. (R – Fla.), 1987 – 1990	R
Andrew Poysell Ireland	Fla.	102nd	U.S. Rep. (R – Fla.), 1977 – 1992	R
Connie Mack	Fla.	106th	U.S. Sen. (R – Fla.), 1989 – 2000; U.S. Rep. (R – Fla.), 1983 – 1988	R
Bill McCollum	Fla.	106th	U.S. Rep. (R – Fla.), 1981 – 2000	R
Dan Mica	Fla.	100th	U.S. Rep. (D – Fla.), 1979 – 1988	D
Paul Grant Rogers	Fla.	95th	U.S. Rep. (D – Fla.), 1955 – 1978	D
Lawrence Jack Smith	Fla.	102nd	U.S. Rep. (D – Fla.), 1983 – 1992	D
Karen Thurman	Fla.	107th	U.S. Rep. (D – Fla.), 1993 – 2002	D
Bob Barr	Ga.	107th	U.S. Rep. (R – Ga.), 1995 – 2002	R
Max Burns	Ga.	108th	U.S. Rep. (R – Ga.), 2003 – 2004	R
George "Buddy" Darden	Ga.	103rd	U.S. Rep. (D – Ga.), 1983 – 1994	D
Billy Lee Evans	Ga.	97th	U.S. Rep. (D – Ga.), 1977 – 1982	D
Ed Jenkins	Ga.	102nd	U.S. Rep. (D – Ga.), 1977 – 1992	D
C. Donald Johnson	Ga.	104th	U.S. Rep., (D – Ga.) 1993 – 1994	D
Elliott Levitas	Ga.	98th	U.S. Rep. (D – Ga.), 1975 – 1984	D
M. Dawson Mathis	Ga.	96th	U.S. Rep. (D – Ga.), 1971 – 1980	D
Mack Mattingly	Ga.	99th	U.S. Sen. (R – Ga.), 1981 – 1986	R
Zell Miller	Ga.	108th	U.S. Sen. (D – Ga.), 1999 – 2004	D
Richard B. Ray	Ga.	102nd	U.S. Rep. (D – Ga.), 1983 – 1992	D
Larry LaRocco	Idaho	103rd	U.S. Rep. (D – Idaho), 1991 – 1994	D
James McClure	Idaho	101st	U.S. Sen. (R – Idaho), 1973 – 1990; U.S. Rep. (R – Idaho), 1967 – 1972	R
Steve Symms	Idaho	102nd	U.S. Sen. (R – Idaho), 1981 – 1992; U.S. Rep. (R – Idaho), 1973 – 1980	R
Thomas Corcoran	Ill.	98th	U.S. Rep. (R – Ill.), 1977 – 1984	R

Lobbyist	State	Last Congress	Position and Term Length	Party
Phil Crane	Ill.	108th	U.S. Rep. (R – Ill.), 1969 – 2004	R
Alan J. Dixon	Ill.	102nd	U.S. Sen. (D – Ill.), 1981 – 1992	D
Thomas W. Ewing	Ill.	106th	U.S. Rep. (R – Ill.), 1991 – 2000	R
Harris Fawell	Ill.	105th	U.S. Rep. (R – Ill.), 1985 – 1998	R
Michael Flanagan	Ill.	104th	U.S. Rep. (R – Ill.), 1995 – 1996	R
Robert P. Hanrahan	Ill.	93rd	U.S. Rep. (R – Ill.), 1972 – 1974	R
Bill Lipinski	Ill.	108th	U.S. Rep. (D – Ill.) 1976 – 2004	D
Robert H. Michel	Ill.	103rd	U.S. Rep. (R – Ill.), 1957 – 1994	R
John Porter	Ill.	106th	U.S. Rep. (R – Ill.), 1979 – 2000	R
Glenn Poshard	Ill.	105th	U.S. Rep. (D – Ill.), 1989 – 1998	D
Thomas Railsback	Ill.	97th	U.S. Rep. (R – Ill.), 1967 – 1982	R
Martin A. Russo	Ill.	102nd	U.S. Rep. (D – Ill.), 1975 – 1992	D
Paul Simon	Ill.	104th	U.S. Sen. (D – Ill.), 1985 – 1996; U.S. Rep. (D – Ill.), 1975 – 1984	D
Birch Bayh	Ind.	96th	U.S. Sen. (D – Ind.), 1963 – 1980	D
Daniel Coats	Ind.	105th	U.S. Sen. (R – Ind.), 1989 – 1998; U.S. Rep. (R – Ind.), 1981 – 1988	R
David Walter Evans	Ind.	97th	U.S. Rep. (D – Ind.), 1975 – 1982	D
Vance Hartke	Ind.	94th	U.S. Sen. (D – Ind.), 1959 – 1976	D
David M. McIntosh	Ind.	106th	U.S. Rep. (R – Ind.), 1995 – 2000	R
John T. Myers	Ind.	104th	U.S. Rep. (R – Ind.), 1967 – 1996	R
Ed Pease	Ind.	106th	U.S. Rep. (R – Ind.), 1997 – 2000	R
Philip Sharp	Ind.	103rd	U.S. Rep. (D – Ind.), 1975 – 1994	D
Roger Zion	Ind.	93rd	U.S. Rep. (R – Ind.), 1967 – 1974	R
John C. Culver	Iowa	96th	U.S. Sen. (D – Iowa), 1975 – 1980; U.S. Rep. (D – Iowa), 1965 – 1974	D
Fred Grandy	Iowa	103rd	U.S. Rep. (R – Iowa), 1987 – 1994	R
James Lightfoot	Iowa	104th	U.S. Rep. (R – Iowa), 1985 – 1996	R
Thomas Tauke	Iowa	101st	U.S. Rep. (R – Iowa), 1979 – 1990	R
Robert Dole	Kansas	104th	U.S. Sen. (R – Kan.), 1969 – 1996; U.S. Rep. (R – Kan.), 1961 – 1968	R
Daniel Robert Glickman	Kansas	103rd	U.S. Rep. (D – Kan.), 1977 – 1994	D
James Charles Slattery	Kansas	103rd	U.S. Rep. (D – Kan.), 1983 – 1994	D
Bob Whittaker	Kansas	101st	U.S. Rep. (R – Kan.), 1979 – 1990	R
Thomas Barlow	Ky.	103rd	U.S. Rep. (D – Ky.), 1993 – 1994	D
Wendell Ford	Ky.	105th	U.S. Sen. (D – Ky.), 1975 – 1998	D
Larry Hopkins	Ky.	102nd	U.S. Rep. (R – Ky.), 1979 – 1992	R
Walter D Huddleston	Ky.	98th	U.S. Sen. (R – Ky.), 1973 – 1984	R
Michael Ward	Ky.	104th	U.S. Rep. (D – Ky.), 1995 – 1996	D
John Breaux	La.	108th	U.S. Sen. (D – La.), 1987 – 2004; U.S. Rep. (D – La.), 1971 – 1986	D
James Allison Hayes	La.	104th	U.S. Rep. (D – La.), 1987 – 1996	D
Jerry Huckaby	La.	102nd	U.S. Rep. (D – La.), 1977 – 1992	D
Chris John	La.	108th	U.S. Rep. (D – La.) 1997 – 2004	D
J. Bennett Johnston	La.	104th	U.S. Sen. (D – La.), 1971 – 1996	D
Robert Livingston	La.	106th	U.S. Rep. (R – La.), 1977 – 2000	R

Lobbyist	State	Last Congress	Position and Term Length	Party
Russell B. Long	La.	99th	U.S. Sen. (D – La.), 1947 – 1986	D
W. Henson Moore	La.	99th	U.S. Rep. (R – La.), 1975 – 1986	R
W.J. "Billy" Tauzin	La.	108th	U.S. Rep. (R – La.), 1979 – 2004	R
Tom Andrews	Maine	103rd	U.S. Rep. (D – Maine.), 1991 – 1994	D
Peter Kyros	Maine	93rd	U.S. Rep., (D – Maine), 1967 – 1974	D
George Mitchell	Maine	103rd	U.S. Sen. (D – Maine), 1980 – 1994	D
Michael Barnes	Md.	99th	U.S. Rep. (D – Md.), 1979 – 1986	D
Helen Delich Bentley	Md.	103rd	U.S. Rep. (R – Md.), 1985 – 1994	R
James Shannon	Mass.	98th	U.S. Rep. (D – Mass.), 1979 – 1984	D
James J. Blanchard	Mich.	97th	U.S. Rep. (D – Mich.), 1975 – 1982	D
Bob Carr	Mich.	103rd	U.S. Rep. (D – Mich.), 1975 – 1980, 1983 – 1994	D
Robert William Davis	Mich.	102nd	U.S. Rep. (R – Mich.), 1979 – 1992	R
Dennis Hertel	Mich.	102nd	U.S. Rep. (D – Mich.), 1981 – 1992	D
Jack H. McDonald	Mich.	92nd	U.S. Rep. (R – Mich., 1967 – 1972)	R
Donald Riegle	Mich.	103rd	U.S. Sen. (D – Mich.), 1975 – 1994; U.S. Rep. (D – Mich.), 1967 – 1974	D
Mark Siljander	Mich.	99th	U.S. Rep. (R – Mich.), 1981 – 1986	R
Guy Vander Jagt	Mich.	102nd	U.S. Rep. (R – Mich.), 1965 – 1992	R
David Durenberger	Minn.	103rd	U.S. Sen. (R – Minn.), 1977 – 1994	R
Arlen Erdahl	Minn.	97th	U.S. Rep. (R – Minn.), 1979 – 1982	R
Rodney Grams	Minn.	106th	U.S. Sen. (R – Minn.), 1995 – 2000; U.S. Rep. (R – Minn.), 1993 – 1994	R
Richard Michael Nolan	Minn.	96th	U.S. Rep. (D – Minn.), 1975 – 1980	D
Gerry Sikorski	Minn.	102nd	U.S. Rep. (D – Minn.),1983 – 1992	D
Vin Weber	Minn.	102nd	U.S. Rep. (R – Minn.), 1981 – 1992	R
Michael Parker	Mo.	105th	U.S. Rep. (R – Miss.), 1989 – 1998	R
Gillespie "Sonny" Montgomery	Miss.	104th	U.S. Rep. (D – Miss.), 1967 – 1996	D
John Ashcroft	Mo.	106th	U.S. Sen. (R – Mo.) 1994 – 2000	R
John William Buechner	Mo.	101st	U.S. Rep. (R – Mo.), 1987 – 1990	R
Tom Coleman	Mo.	102nd	U.S. Rep. (R – Mo.) 1976 – 1990	R
John C. Danforth	Mo.	103rd	U.S. Sen. (R – Mo.), 1976 – 1994	R
Dick Gephardt	Mo.	108th	U.S. Rep. (D – Mo.) 1977 – 2004	D
James Symington	Mo.	94th	U.S. Rep. (D – Mo.), 1969 – 1976	D
James Talent	Mo.	106th	U.S. Rep. (R – Mo.), 1993 – 2000	R
Harold Volkmer	Mo.	104th	U.S. Rep. (D – Mo.), 1977 – 1996	D
Alan Wheat	Mo.	103rd	U.S. Rep. (D – Mo.), 1983 – 1994	D
Ron Marlenee	Mont.	102nd	U.S. Rep. (R – Mont.), 1977 – 1992	R
John Melcher	Mont.	100th	U.S. Sen. (D – Mont.), 1977 – 1988; U.S. Rep. (D – Mont.), 1969 – 1976	D
John J. Cavanaugh	Neb.	96th	U.S. Rep. (D – Neb.), 1977 – 1980	D
Jon Lynn Christensen	Neb.	105th	U.S. Rep. (R – Neb.), 1995 – 1998	R
Harold Daub	Neb.	100th	U.S. Rep. (R – Neb.), 1981 – 1988	R
Peter Hoagland	Neb.	103rd	U.S. Rep. (D – Neb.), 1989 – 1994	D
David Karnes	Neb.	100th	U.S. Sen. (R – Neb.), 1987 – 1988	D

Lobbyist	State	Last Congress	Position and Term Length	Party
James Bilbray	Nev.	103rd	U.S. Rep. (D – Nev.), 1987 – 1994	D
Richard Bryan	Nev.	106th	U.S. Sen. (D – Nev.), 1989 – 2000	D
Paul Laxalt	Nev.	99th	U.S. Sen. (R – Nev.), 1973 – 1986	R
James Santini	Nev.	97th	U.S. Rep. (D – Nev.), 1975 – 1982	D
Norman D'Amours	N.H.	98th	U.S. Rep. (D – N.H.), 1975 – 1984	D
Warren Rudman	N.H.	102nd	U.S. Sen. (R – N.H.), 1979 – 1992	R
Dick Swett	N.H.	103rd	U.S. Rep. (D – N.H.), 1991 – 1994	D
William Zeliff Jr.	N.H.	104th	U.S. Rep. (R – N.H.), 1991 – 1996	R
James Courter	N.J.	101st	U.S. Rep. (R – N.J.), 1979 – 1990	R
Herb Klein	N.J.	103rd	U.S. Rep. (D – N.J.), 1993 – 1994	D
William Martini	N.J.	104th	U.S. Rep. (R – N.J.), 1995 – 1996	R
Matthew Rinaldo	N.J.	102nd	U.S. Rep. (R – N.J.), 1973 – 1992	R
Richard Zimmer	N.J.	104th	U.S. Rep. (R – N.J.), 1991 – 1996	R
Manuel Lujan	N.M.	100th	U.S. Rep. (R – N.M.), 1969 – 1988	R
William Carney	N.Y.	99th	U.S. Rep. (R – N.Y.), 1979 – 1986	R
Alfonse D'Amato	N.Y.	105th	U.S. Sen. (R – N.Y.), 1981 – 1998	R
Joseph DioGuardi	N.Y.	100th	U.S. Rep. (R – N.Y.), 1985 – 1988	R
Thomas Joseph Downey	N.Y.	102nd	U.S. Rep. (D – N.Y.), 1975 – 1992	D
Geraldine Ferraro	N.Y.	98th	U.S. Rep. (D – N.Y.), 1979 – 1984	D
Michael P. Forbes	N.Y.	106th	U.S. Rep. (D – N.Y.), 1995 – 2000	R
Robert Garcia	N.Y.	101st	U.S. Rep. (D – N.Y.), 1977 – 1990	D
Benjamin Gilman	N.Y.	107th	U.S. Rep. (R – N.Y.), 1973 – 2002	R
George Hochbrueckner	N.Y.	103rd	U.S. Rep. (D – N.Y.), 1987 – 1994	D
Elizabeth Holtzman	N.Y.	96th	U.S. Rep. (D – N.Y.), 1973 – 1980	D
Frank J. Horton	N.Y.	102nd	U.S. Rep. (R – N.Y.), 1963 – 1992	R
Jack Kemp	N.Y.	100th	U.S. Rep. (R – N.Y.), 1969 – 1988	R
John Joseph LaFalce	N.Y.	107th	U.S. Rep. (D – N.Y.), 1975 – 2002	D
Rick Lazio	N.Y.	106th	U.S. Rep. (R – N.Y.), 1993 – 2000	R
Norman Lent	N.Y.	102nd	U.S. Rep. (R – N.Y.), 1971 – 1992	R
Thomas Manton	N.Y.	105th	U.S. Rep. (D – N.Y.), 1985 – 1998	D
David O'Brien Martin	N.Y.	102nd	U.S. Rep. (R – N.Y.), 1981 – 1992	R
Ray McGrath	N.Y.	102nd	U.S. Rep. (R – N.Y.), 1981 – 1992	R
Guy Molinari	N.Y.	101st	U.S. Rep. (R – N.Y.), 1981 – 1990	R
Susan Molinari	N.Y.	105th	U.S. Rep. (R – N.Y.), 1989 – 1998	R
Robert Mrazek	N.Y.	102nd	U.S. Rep. (D – N.Y.), 1983 – 1992	D
Bill Paxon	N.Y.	105th	U.S. Rep. (R – N.Y.), 1989 – 1998	R
Jack Quinn	N.Y.	108th	U.S. Rep. (R – N.Y.), 1993 – 2004	R
Stephen Solarz	N.Y.	102nd	U.S. Rep. (D – N.Y.), 1975 – 1992	D
Gerald B.H. Solomon	N.Y.	105th	U.S. Rep. (R – N.Y.), 1979 – 1998	R
George C. Wortley	N.Y.	100th	U.S. Rep. (R – N.Y.), 1981 – 1988	R
Leo C. Zeferetti	N.Y.	97th	U.S. Rep. (D – N.Y.), 1973 – 1982	D
William Wilfred Cobey	N.C.	99th	U.S. Rep. (R – N.C.), 1985 – 1986	R
D. Mclauchlin "Lauch" Faircloth	N.C.	105th	U.S. Sen. (R. N.C.), 1993 – 1998	R

Lobbyist	State	Last Congress	Position and Term Length	Party
David Funderburk	N.C.	104th	U.S. Rep. (R – N.C.), 1995 – 1996	R
James G. Martin	N.C.	98th	U.S. Rep. (R – N.C.), 1973 – 1984	R
J. Alexander McMillan	N.C.	103rd	U.S. Rep. (R – N.C.), 1985 – 1994	R
Robert Morgan	N.C.	96th	U.S. Sen. (D – N.C.), 1975 – 1980	D
Charlie Rose	N.C.	104th	U.S. Rep. (D – N.C.), 1973 – 1996	D
Mark Andrews	N.D.	99th	U.S. Sen. (R – N.D.), 1981 – 1986; U.S. Rep. (R – N.D.), 1963 – 1980	R
Dennis Eckart	Ohio	102nd	U.S. Rep. (D – Ohio), 1981 – 1992	D
Willis Gradison	Ohio	103rd	U.S. Rep. (R – Ohio), 1975 – 1994	R
Delbert Latta	Ohio	100th	U.S. Rep. (R – Ohio), 1959 – 1988	R
Bob McEwen	Ohio	102nd	U.S. Rep. (R – Ohio), 1981 – 1992	R
Howard Metzenbaum	Ohio	103rd	U.S. Sen. (D – Ohio), 1973 – 1994	D
Mary Rose Oakar	Ohio	102nd	U.S. Rep. (D – Ohio), 1977 – 1992	D
James Stanton	Ohio	94th	U.S. Rep. (D – Ohio), 1971 – 1976	D
Louis Stokes	Ohio	105th	U.S. Rep. (D – Ohio), 1969 – 1998	D
Bill Brewster	Okla.	104th	U.S. Rep. (D – Okla.), 1991 – 1996	D
Glenn English	Okla.	103rd	U.S. Rep. (D – Okla.), 1975 – 1994	D
James Jones	Okla.	99th	U.S. Rep. (D – Okla.), 1973 – 1986	D
Steve Largent	Okla.	107th	U.S. Rep. (R – Okla.), 1993 – 2002	R
Dave McCurdy	Okla.	103rd	U.S. Rep. (D – Okla.), 1981 – 1994	D
Don Nickles	Okla.	108th	U.S. Sen. (R – Okla.), 1981 – 2004	R
J.C. Watts	Okla.	107th	U.S. Rep. (R – Okla.), 1995 – 2002	R
Michael Kopetski	Ore.	103rd	U.S. Rep. (D – Ore.), 1991 – 1994	D
Bob Packwood	Ore.	104th	U.S. Sen. (R – Ore.), 1969 – 1996	R
Lucien Blackwell	Pa.	103rd	U.S. Rep. (D – Pa.), 1991 – 1994	D
Robert Borski	Pa.	107th	U.S. Rep. (D – Pa.), 1983 – 2002	D
R. Lawrence Coughlin	Pa.	102nd	U.S. Rep. (R – Pa.), 1969 – 1992	R
James Coyne	Pa.	97th	U.S. Rep. (R – Pa.), 1981 – 1982	R
Charles Dougherty	Pa.	97th	U.S. Rep. (R – Pa.), 1979 – 1982	R
Tom Foglietta	Pa.	105th	U.S. Rep. (D – Pa.), 1981 – 1998	D
William Goodling	Pa.	106th	U.S. Rep. (R – Pa.), 1975 – 2000	R
William H. Gray	Pa.	102nd	U.S. Rep. (D – Pa.), 1979 – 1992	D
William Green	Pa.	94th	U.S. Rep. (D – Pa.), 1965 – 1976	D
Jim Greenwood	Pa.	108th	U.S. Rep. (R – Pa.), 1993 – 2004	R
Joseph Hoeffel	Pa.	108th	U.S. Rep. (D – Pa.), 1999 – 2004	D
Ronald Klink	Pa.	106th	U.S. Rep. (D – Pa.), 1993 – 2000	D
Peter Kostmayer	Pa.	102nd	U.S. Rep. (D – Pa.), 1977 – 1980, 1983 – 1992	D
Joseph Michael McDade	Pa.	105th	U.S. Rep. (R – Pa.), 1963 – 1998	R
Paul McHale	Pa.	105th	U.S. Rep. (D – Pa.), 1993 – 1998	D
Fred B. Rooney	Pa.	95th	U.S. Rep. (D – Pa.), 1963 – 1978	D
Richard Schulze	Pa.	102nd	U.S. Rep. (R – Pa.), 1975 – 1992	R
E.G. "Bud" Shuster	Pa.	107th	U.S. Rep. (R – Pa.), 1973 – 2002	R
Doug Walgren	Pa.	101st	U.S. Rep. (D – Pa.), 1977 – 1990	D

Lobbyist	State	Last Congress	Position and Term Length	Party
Robert Walker	Pa.	104th	U.S. Rep. (R – Pa.), 1977 – 1996	R
Butler Derrick	S.C.	103rd	U.S. Rep. (D – S.C.), 1975 – 1994	D
Thomas Hartnett	S.C.	99th	U.S. Rep. (R – S.C.), 1981 – 1986	R
John Napier	S.C.	97th	U.S. Rep. (R – S.C.), 1981 – 1982	R
Robin Tallon	S.C.	102nd	U.S. Rep. (D – S.C.), 1983 – 1992	D
Tom Daschle	S.D.	108th	U.S. Sen. (D – S.D.), 1987 – 2004; U.S. Rep. (D – S.D.), 1979 – 1986	D
Larry Pressler	S.D.	104th	U.S. Sen. (R – S.D.), 1979 – 1996; U.S. Rep. (R – S.D.), 1975 – 1978	R
John Thune	S.D.	107th	U.S. Rep. (R – S.D), 1997 – 2002	R
Howard Baker	Tenn.	98th	U.S. Sen. (R – Tenn.), 1967 – 1984	R
Ed Bryant	Tenn.	107th	U.S. Rep. (R – Tenn.), 1995 – 2002	R
Bob Clement	Tenn.	107th	U.S. Rep. (D – Tenn.), 1987 – 2002	D
Harold Ford	Tenn.	104th	U.S. Rep. (D – Tenn.), 1975 – 1996	D
Marilyn Lloyd	Tenn.	103rd	U.S. Rep. (D – Tenn.), 1975 – 1994	D
Harlan Matthews	Tenn.	103rd	U.S. Sen. (D – Tenn.), 1993 – 1994	D
Don Sundquist	Tenn.	103rd	U.S. Rep. (R – Tenn.), 1983 – 1994	R
Fred Thompson	Tenn.	107th	U.S. Sen. (R – Tenn.), 1993 – 2002	R
Michael Andrews	Texas	103rd	U.S. Rep. (D – Texas), 1983 – 1994	D
Bill Archer	Texas	106th	U.S. Rep. (R – Texas), 1971 – 2000	R
Dick Armey	Texas	107th	U.S. Rep. (R – Texas), 1985 – 2002	R
Steve Bartlett	Texas	102nd	U.S. Rep. (R – Texas), 1983 – 1992	R
Lloyd Bentsen	Texas	103rd	U.S. Sen. (D – Texas), 1971 – 1994; U.S. Rep. (D – Texas), 1949 – 1954	D
Beau Boulter	Texas	100th	U.S. Rep. (R – Texas), 1985 – 1988	R
John Bryant	Texas	104th	U.S. Rep. (D – Texas), 1983 – 1996	D
Jim Chapman	Texas	104th	U.S. Rep. (D – Texas), 1985 – 1996	D
Ronald D'Emory Coleman	Texas	104th	U.S. Rep. (D – Texas), 1983 – 1996	D
Jack Fields	Texas	104th	U.S. Rep. (R – Texas), 1981 – 1996	R
Phil Gramm	Texas	107th	U.S. Sen. (R – Texas), 1985 – 2002	R
Kent R. Hance	Texas	98th	U.S. Rep. (D – Texas), 1979 – 1984	D
Robert Krueger	Texas	103rd	U.S. Sen. (D – Texas), 1993 – 1994; U.S. Rep. (D – Texas), 1975 – 1978	D
Gregory Laughlin	Texas	104th	U.S. Rep. (R – Texas), 1989 – 1996	R
Marvin Leath	Texas	101st	U.S. Rep. (D – Texas), 1979 – 1990	D
Tom Loeffler	Texas	99th	U.S. Rep. (R – Texas), 1979 – 1986	R
Bill Sarpalius	Texas	103rd	U.S. Rep. (D – Texas), 1989 – 1994	D
Charles Stenholm	Texas	108th	U.S. Rep. (D – Texas), 1979 – 2004	D
Jim Turner	Texas	108th	U.S. Rep. (D – Texas), 1997 – 2004	D
Charles Wilson	Texas	104th	U.S. Rep. (D – Texas), 1973 – 1996	D
E.J. "Jake" Garn	Utah	102nd	U.S. Sen. (R – Utah), 1973 – 1992	R
Allan Howe	Utah	94th	U.S. Rep. (D – Utah), 1975 – 1976	D
Bill Orton	Utah	104th	U.S. Rep. (D – Utah), 1991 – 1996	D
Thomas Bliley Jr.	Va.	106th	U.S. Rep. (R – Va.), 1981 – 2000	R
Herbert Harris	Va.	96th	U.S. Rep. (D – Va.), 1975 – 1980	D

Lobbyist	State	Last Congress	Position and Term Length	Party
Stan Parris	Va.	101st	U.S. Rep. (R – Va.), 1973 – 1990	R
L.F. Payne	Va.	104th	U.S. Rep. (D – Va.), 1987 – 1996	D
Don Bonker	Wash.	100th	U.S. Rep. (D – Wash.), 1975 – 1988	D
Rodney Dennis Chandler	Wash.	102nd	U.S. Rep. (R – Wash.), 1983 – 1992	R
Jennifer Dunn	Wash.	108th	U.S. Rep. (R – Wash.), 1993 – 2004	R
Thomas S. Foley	Wash.	103rd	U.S. Rep. (D – Wash.), 1965 – 1994	D
Slade Gorton	Wash.	106th	U.S. Sen. (R – Wash.), 1981 – 2000	R
Lloyd Meeds	Wash.	95th	U.S. Rep. (D – Wash.), 1965 – 1978	D
George Nethercutt	Wash.	108th	U.S. Rep. (R – Wash.), 1995 – 2004	R
Al Swift	Wash.	103rd	U.S. Rep. (D – Wash.), 1979 – 1994	D
Randy Tate	Wash.	104th	U.S. Rep. (R – Wash.), 1995 – 1996	R
David Michael Staton	W.Va.	97th	U.S. Rep. (R – W.Va.), 1981 – 1982	R
Jay Johnson	Wis.	105th	U.S. Rep. (D – Wis.), 1997 – 1998	D
Robert W. Kasten	Wis.	102nd	U.S. Sen. (R – Wis.), 1981 – 1992; U.S. Rep. (R – Wis.), 1975 – 1978	R
Scott Klug	Wis.	105th	U.S. Rep. (R – Wis.), 1991 – 1998	R
Toby Roth	Wis.	104th	U.S. Rep. (R – Wis.), 1979 – 1996	R
Alan Simpson	Wyo.	104th	U.S. Sen. (R – Wyo.), 1977 – 1996	R
Malcolm Wallop	Wyo.	103rd	U.S. Sen. (R – Wyo.), 1977 – 1994	R

Source: Analysis of data from Public Citizen's lobbying database at www.lobbyinginfo.org

Appendix B:
Lobbying Fees Paid to the Livingston Group by U.S. Clients

Client Companies	1999	2000	2001	2002	2003	2004	Total
3001	$60,000	$80,000	$80,000	$20,000	$120,000	$100,000	$460,000
321 Studios	–	–	–	–	–	$60,000	$60,000
Accenture	–	–	–	$80,000	$180,000	$220,000	$480,000
ACS Government Solutions Group	–	$40,000	–	–	–	–	$40,000
American Association of Nurse Anesthetists	$40,000	$80,000	$120,000	–	–	–	$240,000
Audubon Institute	$20,000	$20,000	–	–	–	–	$40,000
Aztec Software Associates, Inc.	–	–	–	–	–	$200,000	$200,000
BAE Systems	–	–	$80,000	$300,000	$320,000	$60,000	$760,000
Bailey Link	$20,000	–	–	–	–	–	$20,000
Blue Cross & Blue Shield Association	$40,000	–	–	–	–	–	$40,000
Bollinger Shipyards Inc.	$60,000	$80,000	$20,000	$20,000	–	–	$180,000
Broward County	–	$40,000	–	–	–	–	$40,000
Brunswick Corporation	–	–	–	–	$100,000	$80,000	$180,000
Bunge North America Inc.	–	–	$20,000	$40,000	$60,000	–	$120,000
Burk – Kleinpeter Inc.	$20,000	–	–	–	–	–	$20,000
Business Council of New Orleans and River Region	–	$40,000	$40,000	$40,000	$60,000	$60,000	$240,000
CACI	–	$40,000	$40,000	$40,000	$40,000	$20,000	$180,000
Cacique Del Mar	–	–	$20,000	–	–	–	$20,000
Calthness Energy LLC	–	–	–	–	$40,000	$200,000	$240,000
Case Western Researve University	–	–	–	–	–	$160,000	$160,000
Chamber – New Orleans and River Region/ Metro Vision (Greater New Orleans Development Foundation)	$20,000	$80,000	$40,000	$40,000	$40,000	$40,000	$260,000
Chevron Texaco	–	–	$120,000	$200,000	–	–	$320,000
Children's Hospital and Research Center of Oakland	–	–	–	–	$40,000	–	$40,000
City of Baton Rouge	–	$80,000	$80,000	$80,000	$60,000	$40,000	$340,000
City of Mesa Arizona	–	$20,000	$80,000	$60,000	$80,000	–	$240,000
City of New Orleans	–	–	–	–	$60,000	$100,000	$160,000
City of New Port News	–	–	–	–	–	$20,000	$20,000

Client Companies	1999	2000	2001	2002	2003	2004	Total
Clarke Environmental Mosquito Management, Inc.	–	–	–	–	$20,000	–	$20,000
Coalition for Equitable Regulation and Taxation	–	–	$80,000	$40,000	–	–	$120,000
Collegiate Funding Services	–	–	–	–	$100,000	$200,000	$300,000
Collis Associates	–	–	–	–	$20,000	–	$20,000
Columbus General L.L.C	$20,000	$60,000	$40,000	$40,000	$20,000	–	$180,000
Committee of Unsecured Creditors	–	–	$260,000	$180,000	–	–	$440,000
Commonwealth Atlantic Properties Inc.	–	$40,000	–	–	–	–	$40,000
Commonwealth of Kentucky, Homeland Security	–	–	–	–	–	$60,000	$60,000
Community Oncology Alliance	–	–	–	–	$180,000	$240,000	$420,000
De La Rue International Limited	–	–	–	–	$140,000	–	$140,000
Decherts LLP	–	–	–	–	–	$60,000	$60,000
Dechet LLP	–	–	–	–	$120,000	–	$120,000
Diamond Game Enerprise	–	–	–	–	$20,000	–	$20,000
Digital Commerce Corporation	–	$40,000	$20,000	–	–	–	$60,000
Doley Securities, Inc.	–	–	–	–	–	$20,000	$20,000
Duke University – School of Medicine	–	–	–	–	$40,000	–	$40,000
El Paso Electric Company	$40,000	$40,000	–	–	–	–	$80,000
Energy Conversion Devices	–	–	–	–	$40,000	$80,000	$120,000
Feld Entertainment, Inc.	–	–	–	–	–	$100,000	$100,000
Florida Department of Citrus	–	–	–	–	–	$140,000	$140,000
General Category Tuna Association	–	$20,000	–	–	–	–	$20,000
General Electric	–	$220,000	–	–	–	–	$220,000
George Washington University	–	–	–	–	–	$40,000	$40,000
Girls and Boys Town USA	–	$40,000	$60,000	$40,000	$60,000	$80,000	$280,000
Goodyear Tire and Rubber Company	–	–	–	–	$140,000	$240,000	$380,000
Halter Marine Group Inc.	$40,000	–	–	–	–	–	$40,000
Hoveround Corporation	–	–	–	–	$100,000	$260,000	$360,000

Client Companies	1999	2000	2001	2002	2003	2004	Total
Illinois Department of Human Services	–	$120,000	$60,000	$100,000	–	–	$280,000
Innovative Emergency Management Inc.	–	–	$40,000	$80,000	$140,000	$180,000	$440,000
Inspec Foam	–	–	–	$100,000	$80,000	$80,000	$260,000
International Ship Holding Corporation	$80,000	$120,000	$60,000	$100,000	$100,000	$120,000	$580,000
International Systems Inc.	–	$40,000	–	–	–	–	$40,000
International Technology Resources inc.	$40,000	$20,000	–	–	–	–	$60,000
Jacobus Tenbroek Memorial Fund	–	$60,000	$40,000	$40,000	$40,000	$120,000	$300,000
Jefferson Parish Council	$20,000	$40,000	$60,000	$80,000	$80,000	$60,000	$340,000
JRL Enterprises	$60,000	$140,000	$100,000	$280,000	$200,000	$120,000	$900,000
Kwen Ho Sung	–	–	–	–	–	$200,000	$200,000
LA County Metropolitan Transportation Authority	–	–	–	–	$140,000	$40,000	$180,000
Link Plus Corporation	–	$40,000	$60,000	–	–	–	$100,000
Lockheed Martin Global Telecommunications	$100,000	$140,000	$220,000	–	–	–	$460,000
Louisiana State University Health Science Center	–	–	$20,000	$60,000	$40,000	–	$120,000
M.I.C Industries	–	–	–	–	$200,000	$100,000	$300,000
Marine Desalination Systems, LLC	–	$20,000	–	$20,000	$40,000	$20,000	$100,000
McDermott International, Inc.	–	–	–	–	–	$160,000	$160,000
MCI WorldCOM	–	–	–	–	$160,000	–	$160,000
MCNC – RDI	–	–	–	–	$40,000	$140,000	$180,000
Metropolitan Area Networks	–	–	$20,000	–	$60,000	–	$80,000
midAmerican Energy Holdings Company	–	$260,000	–	–	–	–	$260,000
Mirrian Group	–	–	–	–	–	$80,000	$80,000
Montgomery Watson/ Khafra	–	–	–	–	$60,000	$40,000	$100,000
Morgan City Harbor & Terminal District	–	–	–	–	–	$20,000	$20,000
Mote Marine Laboratory	–	–	–	–	–	$40,000	$40,000
Nacto Group	–	–	–	–	$80,000	–	$80,000
NASA Aeronautics Support Team Inc.	–	–	–	–	–	$40,000	$40,000

Client Companies	1999	2000	2001	2002	2003	2004	Total
National Capitol Concepts	–	$20,000	–	$20,000	$20,000	$20,000	$80,000
National Milk Producers Federation	–	–	–	–	–	$140,000	$140,000
Nevada Cancer Institute	–	–	–	$40,000	$140,000	$40,000	$220,000
New York Blood Center	–	–	–	–	$60,000	$200,000	$260,000
Northpoint Technology Ltd.	–	–	$100,000	$120,000	$80,000	–	$300,000
Northrop Grumman	$100,000	$120,000	$140,000	$80,000	$60,000	$100,000	$600,000
Omega Protein Inc.	–	–	–	–	$40,000	$120,000	$160,000
Oracle Corporation	$140,000	$240,000	$240,000	$320,000	$340,000	$420,000	$1,700,000
Orleans Parish 911	–	–	–	–	$120,000	$120,000	$240,000
PACE	–	–	–	–	$20,000	–	$20,000
Partnership for a Drug – Free America	–	–	–	–	–	$180,000	$180,000
Peoplesoft	$40,000	$60,000	–	–	–	–	$100,000
PKD Foundation	–	–	–	–	$60,000	$40,000	$100,000
Plaquemines Parish Sheiffs Office	–	–	–	–	–	$20,000	$20,000
Port of New Orleans	–	$80,000	$80,000	$80,000	$80,000	$80,000	$400,000
Production Supply Company	–	$20,000	–	–	–	–	$20,000
Production Supply Company Inc.	$20,000	$20,000	–	–	–	–	$40,000
Raytheon Company	–	$60,000	$80,000	$80,000	$80,000	$80,000	$380,000
Rinker Materials, Incs.	–	–	–	–	–	$80,000	$80,000
Roz Group	–	–	$60,000	–	–	–	$60,000
Rush – Presbyterian – St. Lukes Medical Center	–	–	–	$60,000	$320,000	$340,000	$720,000
Sapient Corp.	–	–	–	–	$140,000	–	$140,000
Schering – Plough	–	$40,000	–	–	–	–	$40,000
Science & Engineering Associates INC. (APOGEN Technology, Inc.)	$40,000	$80,000	$80,000	$80,000	$80,000	$80,000	$440,000
Sewage and Water Board of New Orleans	$20,000	$40,000	$40,000	$40,000	$20,000	–	$160,000
Shell Exploration & Production Company	–	–	–	–	–	$20,000	$20,000
Sippican Inc.	–	–	–	–	–	$120,000	$120,000
Sonoma Entertainment Investors	–	–	$40,000	–	–	–	$40,000
Southern Florida Museum	–	–	–	–	–	$80,000	$80,000
Southern Shrimp Alliance	–	–	–	–	$80,000	$100,000	$180,000

Client Companies	1999	2000	2001	2002	2003	2004	Total
Southwest Missouri State University	–	–	–	–	$160,000	$160,000	$320,000
Stanwich Group LLC	–	–	–	–	$200,000	–	$200,000
Stewart Enterprises Inc.	–	$20,000	–	–	–	–	$20,000
Tammany Holding Corporation	$20,000	$40,000	$60,000	$20,000	–	–	$140,000
Tefen Yazamot LTD	–	–	–	–	$320,000	$100,000	$420,000
The African – American Institute	–	–	–	–	$80,000	$40,000	$120,000
The History Makers	–	–	–	–	–	$20,000	$20,000
Themogenesis	–	–	–	–	$120,000	$80,000	$200,000
Tulane University	$20,000	$40,000	$40,000	$40,000	$60,000	$60,000	$260,000
United to Secure America	–	–	–	–	$100,000	$180,000	$280,000
University of New Orleans Foundation	$20,000	$40,000	$40,000	$40,000	$40,000	$40,000	$220,000
US Oil and Gas Association	–	$40,000	$60,000	–	–	–	$100,000
UStar	$40,000	$60,000	$20,000	–	–	–	$120,000
Verizon Communication, Inc.	–	–	–	–	–	$320,000	$320,000
Virginia Living Museum	–	–	–	–	–	$60,000	$60,000
VitaRx	–	–	$80,000	$20,000	–	–	$100,000
Voyager Expanded Learning	–	–	$120,000	$160,000	$40,000	–	$320,000
Waterways Work	–	–	$160,000	$140,000	$140,000	$160,000	$600,000
Williams Connolly, LLP	–	–	–	$360,000	–	–	$360,000
Yeshiva	–	–	$60,000	–	–	–	$60,000
Zeliff Enterprises	–	–	–	–	–	$40,000	$40,000
Total	**$1,140,000**	**$3,080,000**	**3,380,000**	**$3,780,000**	**$6,660,000**	**$8,080,000**	**$26,120,000**

Source: Public Citizen analysis of records filed with the Secretary of the Senate. (Available at sopr.senate.org)

Appendix C: Campaign Contributions Controlled by Bob Livingston, 2000 – 2004

Recipient (Candidate and/or PAC)	Contributions From Bob or Bonnie Livingston (Wife)	Contributions From Friends of Bob Livingston PAC	Contributions From Livingston Group PAC	Total
Peter Jon Abair (R – Unsuccessful House Candidate, 2000)		$500		$500
Sen. Spencer Abraham (R – Mich.) (1995 – 2000)			$1,000	$1,000
Rep. Robert B. Aderholt (R – Ala.)		$1,000	$500	$1,500
Rep. Rodney Alexander (R – La.)		$1,000		$1,000
Sen. George Allen (R – Va.)		$500	$1,000	$1,500
America's PAC	$250			$250
Rep. Dick Armey (R – Texas) (1985 – 2002)			$500	$500
Sen. John Ashcroft (R – Mo.) (1995 – 2000)		$1,000		$1,000
Lisa Ann Atkins (R – Unsuccessful House Candidate, 2002)			$500	$500
Rep. Richard Baker (R – La.)	$2,000	$3,000	$2,000	$7,000
Rep. Cass Ballenger (R – N.C.) (1985 – 2004)			$1,000	$1,000
Louis J. Barletta (R – Unsuccessful House Candidate, 2002)			$500	$500
Rep. Bob Barr (R – Ga.) (1995 – 2002)			$500	$500
Bradley Linus Barton (R – Unsuccessful House Candidate, 2002)			$42	$42
Helen Delich Bentley (R – Unsuccessful House Candidate, 2002)			$500	$500
Rep. Doug Bereuter (R – Neb.) (1979 – 2004)		$1,000		$1,000
Rep. Brian P. Bilbray (R – Ca.) (1995 – 2000)		$500		$500
Rep. Roy Blunt (R – Mo.) and Rely on Your Beliefs PAC	$1,000		$3,500	$4,500
Rep. Sherwood Boehlert (R – N.Y.)			$500	$500
Rep. John Boehner (R – Ohio)			$1,000	$1,000
Rep. Henry Bonilla (R – Texas) and American Dream PAC			$3,000	$3,000
Rep. Jo Bonner (R – Ala.)	$750	$1,000		$1,750
Rep. John Boozman (R – Ark.)			$500	$500
Rep. Charles W. Boustany (R – La.)	$1,000		$1,000	$2,000
Rep. Ed Bryant (R – Tenn.) (1995 – 2002)			$500	$500
Sen. Jim Bunning (R – Ky.)		$1,000	$1,000	$2,000
Sen. Conrad Burns (R – Mont.)		$1,000		$1,000
Sen. Richard Burr (R – N.C.)		$2,000		$2,000
Rep. Dan Burton (R – Ind.) and Hoosier PAC			$2,515	$2,515
President George W. Bush	$5,150		$5,000	$10,150
Rep. Steve Buyer (R – Ind.)		$500		$500
Rep. Sonny Callahan (R – Ala.) (1985 – 2002)			$500	$500
Rep. Eric Cantor (R – Va.) and Every Republican is Crucial PAC			$1,000	$1,000
Rep. Shelley Moore Capito (R – W.Va.)		$500		$500
Sen. Saxby Chambliss (R – Ga.) and Common Sense Leadership Fund		$500		$500
Calder Clay (R – Unsuccessful House Candidate, 2004)			$500	$500

Recipient (Candidate and/or PAC)	Contributions From Bob or Bonnie Livingston (Wife)	Contributions From Friends of Bob Livingston PAC	Contributions From Livingston Group PAC	Total
Sen. Thad Cochran (R – Miss.) and Senate Victory Fund PAC		$2,000	$1,000	$3,000
Mac Collins (R – Unsuccessful House Candidate, 2004)			$1,000	$1,000
John Cooksey (R – Unsuccessful House Candidate, 2002)	$500	$500		$1,000
Sen. Larry Craig (R – Idaho)			$2,000	$2,000
Rep. Phil Crane (R – Ill.) (1969 – 2004)			$2,946	$2,946
James F. Cunneen (R – Unsuccessful House Candidate, 2000)			$500	$500
Rep. Randy "Duke" Cunningham (R – Calif.)		$1,000	$2,000	$3,000
Rep. Jo Ann Davis (R – Va.)		$500		$500
Rep. Tom Davis (R – Va.) and Federal Victory Fund			$750	$750
Rep. Tom DeLay (R – Texas) and Americans for a Republican Majority		$4,500	$3,500	$8,000
Sen. James W. DeMint (R – S.C.)		$1,000		$1,000
Rep. Mike DeWine (R – Ohio)			$1,000	$1,000
Larry William Diedrich (R – Unsuccessful House Candidate, 2004)		$1,000		$1,000
Sen. Elizabeth Dole (R – N.C.)			$1,044	$1,044
Sen. Pete V. Domenici (R – N.M.) and Pete's PAC		$1,000	$3,000	$4,000
Rep. John T. Doolittle (R – Calif.)		$3,500	$2,000	$5,500
Rep. David Dreier (R – Calif.) and American Success PAC	$500	$1,000		$1,500
Rep. John J. Duncan Jr. (R – Tenn.)		$500		$500
Rep. Bob Ehrlich (R – Maryland)			$1,000	$1,000
Sen. John Ensign (R – Nev.)		$1,000		$1,000
Rep. Terry Everett (R – Ala.)			$1,000	$1,000
Rep. Mike Ferguson (R – N.J.)	$500	$500		$1,000
Rep. Ernie Fletcher (R – Ky.) (1999 – 2004)		$500		$500
Rep. J. Randy Forbes (R – Va.)		$1,000		$1,000
Michael P. Forbes (R – Unsuccessful House Candidate, 2000)			$2,000	$2,000
Douglas R. Forrester (R – Unsuccessful House Candidate, 2002)	$500			$500
Rep. Jeffrey Lane Fortenberry (R – Neb.)	$500			$500
Rep. Vito Fossella (R – N.Y.)		$500		$500
Rep. Bob Franks (R – N.J.) (1993 – 2000)			$1,000	$1,000
Rep. Rodney Frelinghuysen (R – N.J.)		$1,000	$1,500	$2,500
Rep. Elton Gallegly (R – Calif.)	$500	$500		$1,000
Rep. George W. Gekas (R – Pa.)			$1,000	$1,000
Rep. Jim Gerlach (R – Pa.)			$500	$500
Rep. Benjamin A. Gilman (R – N.Y.)			$500	$500
Rep. Phil Gingrey (R – Ga.)			$500	$500
Rudolph W. Giuliani (R – Unsuccessful Senate Candidate, 2000)		$500		$500
Rep. Bob Goodlatte (R – Va.)		$2,000	$1,000	$3,000
Sen. Lindsey Graham (R – S.C.)		$1,000	$1,000	$2,000

Recipient (Candidate and/or PAC)	Contributions From Bob or Bonnie Livingston (Wife)	Contributions From Friends of Bob Livingston PAC	Contributions From Livingston Group PAC	Total
Rep. Kay Granger (R – Texas)			$3,600	$3,600
Carolyn W. Grant (R – Unsuccessful House Candidate, 2002)			$500	$500
Sen. Chuck Grassley (R – Iowa)		$1,000	$4,000	$5,000
Rep. Mark Green (R – Wis.)		$500		$500
Sen. Judd Gregg (R – N.H.)	$1,000		$3,000	$4,000
Rep. Felix J. Grucci Jr. (R – N.Y.)			$500	$500
Sen. Chuck Hagel (R – Neb.)			$500	$500
Rep. Katherine Harris (R – Fla.)			$2,000	$2,000
Rep. Melissa Hart (R – Pa.)			$1,000	$1,000
Rep. Dennis Hastert (R – Ill.) and Keep Our Majority PAC	$250	$10,500	$500	$11,250
Rep. Robin Hayes (R – N.C.)		$500	$500	$1,000
Rep. J. D. Hayworth (R – Ariz.)		$1,000		$1,000
Rep. Dave Hobson (R – Ohio)		$1,500	$1,176	$2,676
Clyde Cecil Holloway (R – Unsuccessful House Candidate, 2002)		$500	$500	$1,000
Rep. Duncan Hunter (R – Calif.)		$1,653	$2,000	$3,653
Rep. Tim Hutchinson (R – Ark.) (1993 – 2002)		$1,000	$1,085	$2,085
Sen. Kay Bailey Hutchison (R – Texas)			$1,500	$1,500
Rep. Henry J. Hyde (R – Ill.)		$1,000	$1,000	$2,000
Sen. James Inhofe (R – Okla.) and Fund for a Conservative Future PAC		$1,000		$1,000
Rep. Ernest J. Istook (R – Okla.) and Fund for a Conservative Future	$1,000	$1,000	$2,621	$4,621
Rep. Bobby Jindal (R – La.)	$1,000		$2,000	$3,000
Rep. Chris John (D – La.) (1997 – 2004)		$500		$500
Joan B. Johnson (R – Unsuccessful House Candidate, 2000)			$500	$500
Rep. Nancy L. Johnson (R – Conn.)		$500	$500	$1,000
Rep. Timothy V. Johnson (R – Ill.)		$3,500		$3,500
Rep. Ric Keller (R – Fla.)		$500		$500
Alice Forgy Kerr (R – Unsuccessful House Candidate, 2004)	$1,000			$1,000
Rep. Jack Kingston (R – Ga.) and 13th Colony Leadership Committee	$500	$500	$2,013	$3,013
Rep. Mark Kirk (R – Ill.)		$732	$1,000	$1,732
Rep. Joe Knollenberg (R – Mich.)		$1,000	$1,500	$2,500
Rep. Jim Kolbe (R – Ariz.)		$2,000	$1,000	$3,000
John Koster (R – Unsuccessful House Candidate, 2000)		$500		$500
Rep. Steven T. Kuykendall (R – Calif.) (1999 – 2000)		$500		$500
Rep. Ray LaHood (R – Ill.) and Abraham Lincoln Leadership PAC		$1,500	$2,019	$3,519
Rep. Steve Largent (R – Okla.) (1993 – 2002)		$250	$500	$750
Rep. Tom Latham (R – Iowa)			$1,029	$1,029
Rep. Rick A. Lazio (R – N.Y.) (1993 – 2000)	$500		$5,000	$5,500
Rep. Jerry Lewis (R – Calif.) and Future Leaders PAC	$500	$5,433	$3,000	$8,933

Recipient (Candidate and/or PAC)	Contributions From Bob or Bonnie Livingston (Wife)	Contributions From Friends of Bob Livingston PAC	Contributions From Livingston Group PAC	Total
Rep. Ron Lewis (R – Ky.)	$500			$500
Rep. John Linder (R – Ga.)			$500	$500
Rep. Robert L. Livingston (R – La.) (1977 – 2000) Livingston Group PAC, Friends of Bob Livingston PAC	$110,000			$110,000
Sen. Trent Lott (R – Miss.) and New Republican Majority Fund		$3,500	$2,000	$5,500
Sen. Richard G. Lugar (R – Ind.)			$2,000	$2,000
Rep. Dan Lungren (R – Calif.)	$2,000			$2,000
Rep. Connie Mack (R – Fla.)			$1,000	$1,000
Rep. Don Manzullo (R – Ill.)			$500	$500
Sen. Mel Martinez (R – Fla.)			$1,000	$1,000
Rep. Bill McCollum (R – Fla.) (R – Unsuccessful Senate Candidate, 2004)	$1,000	$500		$1,500
Sen. Mitch McConnell (R – Ky.)		$1,000		$1,000
Rep. James McCrery (R – La.) and Committee for the Preservation of Capitalism		$5,000	$2,500	$7,500
Rep. John M. McHugh (R – N.Y.)			$500	$500
Rep. Howard P. "Buck" McKeon (R – Ca.)		$1,000	$2,000	$3,000
Tim J. Michels (R – Unsuccessful House Candidate, 2004)		$1,000		$1,000
Dan Miller (R – Unsuccessful House Candidate, 2002)			$500	$500
Sen. Lisa Murkowski (R – Alaska)			$1,000	$1,000
Rep. Marilyn Musgrave (R – Colo.)		$500		$500
Rep. Sue Myrick (R – N.Y.)	$500			$500
National Republican Congressional Committee	$1,000	$25,500	$16,500	$43,000
National Republican Senatorial Committee		$5,000	$19,500	$24,500
Rep. George Nethercutt (R – Wash.) (1995 – 2004)	$1,000	$1,000	$3,695	$5,695
Northpoint Technology (PAC)	$1,000			$1,000
Rep. Anne M. Northup (R – Ky.)		$2,500	$1,000	$3,500
Rep. Jim Nussle (R – Iowa)			$500	$500
Rep. C. L. 'Butch' Otter (R – Idaho)		$500		$500
Rep. Michael G. Oxley (R – Ohio) and Leadership PAC			$3,500	$3,500
Ron Packard (R – Unsuccessful House Candidate, 2000)		$1,000		$1,000
Rep. Charles "Chip" Pickering (R – Miss.)		$1,000	$1,000	$2,000
Rep. Jon Porter (R – Nev.)			$1,500	$1,500
Rep. Deborah Pryce (R – Ohio)		$500		$500
Rep. Adam H. Putnam (R – Fla.)		$2,000		$2,000
Rep. Jack Quinn (R – N.Y.) (1993 – 2004)		$500		$500
Rep. George Radanovich (R – Calif.)		$500	$500	$1,000
Rep. Bill Redmond (R – N.M.) (1997 – 1998)			$652	$652
Rep. Ralph Regula (R – Ohio) and CARE PAC	$1,500		$1,000	$2,500

Recipient (Candidate and/or PAC)	Contributions From Bob or Bonnie Livingston (Wife)	Contributions From Friends of Bob Livingston PAC	Contributions From Livingston Group PAC	Total
Rep. Denny Rehberg (R – Mont.)		$1,250	$500	$1,750
Rep. Rick Renzi (R – Ariz.)	$500		$1,000	$1,500
Republican Campaign Committee of New York			$1,000	$1,000
Republican Central Committee of South Dakota	$500			$500
Republican National Committee	$7,250	$7,500	– $7,000	$7,750
Republican Party of Louisiana	$950	$5,000	$10,000	$15,950
Rep. Tom Reynolds (R – N.Y.) and Together for Our Majority			$1,500	$1,500
Rep. Bob Riley (R – Ala.) (1997 – 2002)		$500		$500
Sen. Pat Roberts (R – Kansas)		$1,000		$1,000
Rep. Hal Rogers (R – Ky.) and Help America's Leaders		$4,000	$1,031	$5,031
Rep. Mike Rogers (R – Ala.)		$500		$500
Rep. Dana Rohrabacher (R – Calif.)		$100	$1,000	$1,100
Rep. Ileana Ros – Lehtinen (R – Fla.)		$500		$500
Rep. Paul Ryan (R – Wisc.)		$500		$500
Sen. Rick Santorum (R – Pa.) and America's Foundation		$2,000	$1,111	$3,111
Rep. Jim Saxton (R – N.J.)		$1,000		$1,000
Rep. Ed Schrock (R – Va.) (2001 – 2004)		$1,500	$500	$2,000
Rep. Pete Sessions (R – Texas)	$500	$1,000	$1,000	$2,500
Rep. E. Clay Shaw Jr. (R – Fla.)		$1,000	$2,000	$3,000
Rep. Richard C. Shelby (R – Ala.)	$1,000	$1,000		$2,000
Rep. Don Sherwood (R – Pa.)		$1,500	$500	$2,000
Rep. John M. Shimkus (R – Ill.)		$1,000	$1,000	$2,000
Philip Granville Short (R – Unsuccessful Senate Candidate, 2000)		$1,000		$1,000
Rep. Bud Shuster (R – Pa.)		$1,000		$1,000
Rep. Joe Skeen (R – N.M.)		$2,000		$2,000
Sen. Bob Smith (R – N.H.)		$1,500		$1,500
Derek W. Smith (R – Unsuccessful House Candidate, 2000)			$500	$500
Sen. Gordon H. Smith (R – Ore.)		$1,000		$1,000
Sen. Olympia J. Snowe (R – Maine)		$250		$250
Sen. Arlen Specter (R – Pa.)		$1,000	$1,000	$2,000
Rep. Floyd D. Spence (R – S.C.) (1971 – 2002)		$1,000		$1,000
Donald B. Stenberg (R – Unsuccessful House Candidate, 2000)		$500	$500	$1,000
Sen. Ted Stevens (R – Alaska)		$5,000	$4,000	$9,000
Rep. Bob Stump (R – Ariz.) (1977 – 2002)		$34	$2,000	$2,034
Sen. John E. Sununu (R – N.H.) and Daniel Webster PAC	$500	$2,000	$1,500	$4,000
Susan B. Anthony List (PAC)	$1,000			$1,000
Rep. John E. Sweeney (R – N.Y.)		$1,000	$500	$1,500
Sen. James M. Talent (R – Mo.)			$1,000	$1,000
Rep. Tom Tancredo (R – Colo.)		$1,500		$1,500
Rep. Billy Tauzin (R – La.) (1979 – 2004) and Bayou Leader PAC	$1,500	$4,416	$3,299	$9,215

Recipient (Candidate and/or PAC)	Contributions From Bob or Bonnie Livingston (Wife)	Contributions From Friends of Bob Livingston PAC	Contributions From Livingston Group PAC	Total
Rep. Charles H. Taylor (R – N.C.)		$1,000	$2,500	$3,500
Suzanne Terrell (R – Unsuccessful House Candidate, 2002)			$5,000	$5,000
Rep. Lee Terry (R – Neb.)			$2,000	$2,000
Rep. Bill Thomas (R – Calif.)			$1,000	$1,000
Sen. John Thune (R – S.D.)		$500	$1,000	$1,500
Rep. Todd Tiahrt (R – Kan.)		$500	$2,500	$3,000
Rep. David C. Treen (R – La.)	$1,000	$1,000	$10,000	$12,000
Rep. Fred Upton (R – Mich.)		$500	$1,000	$1,500
Sen. David Vitter (R – La.)	$4,000	$2,000	$7,000	$13,000
Sen. George V. Voinovich (R – Ohio)			$1,000	$1,000
Rep. James T. Walsh (R – N.Y.)		$1,000	$1,000	$2,000
Rep. Zach Wamp (R – Tenn.)			$1,000	$1,000
Sen. John W. Warner (R – Va.)			$500	$500
Rep. J. C. Watts Jr. (R – Okla.) (1995 – 2002)		$1,000		$1,000
Rep. Curt Weldon (R – Va.) and Committee for a United Republican Team		$1,000	$500	$1,500
Rep. Jerry Weller (R – Ill.)			$1,500	$1,500
Rep. Ed Whitfield (R – Ky.)		$500	$1,000	$1,500
Rep. Roger Wicker (R – Miss.)		$1,500		$1,500
Rep. Heather Wilson (R – N.M.)	$500	$1,500	$500	$2,500
Rep. Joe Wilson (R – S.C.)			$250	$250
Rep. Frank R. Wolf (R – Va.)	$1,000	$3,000	$2,563	$6,563
Rep. C. W. "Bill" Young (R – Fla.) and Victory PAC		$1,000	$3,540	$4,540
Rep. Don Young (R – Alaska)		$750		$750
Total	**$157,600**	**$201,868**	**$243,981**	**$503,449***

Source: Public Citizen analysis of data supplied by the Center for Responsive Politics

*This figure does not include $100,000 in contributions made by Bob Livingston to his own PACs, since that amount is reflected in contributions made by his PACs to candidates.

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SUNLIGHT FOUNDATION SECTION BY SECTION ANALYSIS OF S. 1, THE LEGISLATIVE TRANSPARENCY AND ACCOUNTABILITY ACT OF 2007

Outlined below is the Sunlight Foundation's section by section analysis of S. 1, the Legislative Transparency and Accountability Act of 2007. Also included are provisions of the House Honest Leadership and Open Government Act of 2006 for which there are no corresponding Senate provisions. The italicized comments reflect Sunlight's position on each of the provisions. Sunlight does not take a position on provisions not included in this document. In general, Sunlight supports provisions that increase transparency and enable citizens to learn more about what Congress and their elected representatives are doing. These legislative or rules changes help reduce corruption, ensure greater accountability, and foster public trust in Congress.

In addition to the provisions outlined below, Sunlight supports amending the Lobbyist Disclosure Act (LDA) to require a plain English description of the action sought by the lobbyist on behalf of its client, and a list of each covered legislative branch official or covered executive branch official contacted one or more times by the lobbyist.

Finally, Sunlight strongly advocates making Personal Financial Disclosure Reports available online within 30 days of filing. A database of such reports should be made available to the public free of charge, in a searchable and downloadable format.

SEC. 103. CONGRESSIONAL EARMARK REFORM.

All bills, joint resolutions and conference reports must report a list of earmarks containing the sponsor, cost, purpose and whether the sponsor or an immediate family member will benefit from the earmark. All such lists of earmarks must be put online in a searchable format 48 hours before consideration of the bill or resolution.

Sunlight strongly supports this provision and supports a change in House Rules that would similarly provide that the list of earmarks are put online in a searchable format at least 48 hours before consideration.

Sunlight urges co-sponsorship of H.Res. 169, sponsored by Congressman Dennis Moore, that would amend House Rules to require that the list of earmarks be made available to the general public on the Internet.

SEC. 104. AVAILABILITY OF CONFERENCE REPORTS ON THE INTERNET.

A conference report will be out of order unless it is available to all Members and made available to the general public by means of the Internet for at least 48 hours before its consideration. The Secretary of the Senate, in consultation with the Clerk of the House, the Government Printing Office, and the Committee on Rules and Administration, shall develop a website capable of complying with these requirements.

Sunlight supports this provision.

SEC. 106. ELIMINATION OF FLOOR PRIVILEGES AND USE OF SENATE OR HOUSE GYMS FOR FORMER MEMBERS, SENATE OFFICERS, AND SPEAKERS OF THE HOUSE WHO ARE LOBBYISTS OR SEEK FINANCIAL GAIN.

Sunlight supports a log of lobbyists who use the gym or have access to the floor. The log would need to be publicly available on the Internet promptly after any lobbyist took advantage of the floor privileges or used the House gym.

SEC. 109. RESTRICTIONS ON LOBBYIST PARTICIPATION IN TRAVEL AND DISCLOSURE.

A Member, officer, or employee, before accepting otherwise permissible transportation or lodging, must obtain a written certification that includes certain disclaimers regarding a registered lobbyist or foreign agent. Disclosure of information regarding non-commercial air travel is also required.

The Federal Election Campaign Act is amended to require a publicly available report of any flight taken by a federal candidate on an aircraft not licensed by the FAA to operate for compensation or hire.

Sunlight supports the increased disclosure requirements.

SEC. 112. DISCLOSURE BY MEMBERS OF CONGRESS AND STAFF

Members may not negotiate for new jobs before their successor is elected unless the Member files a statement describing the job and the negotiations with the Secretary of the Senate.

A Member shall not directly negotiate or have any arrangement concerning prospective employment until after his or her successor has been elected for a job involving lobbying activities as defined by the LDA.

Senior staff must notify the Committee on Ethics that he or she is negotiating or has any arrangement concerning prospective private employment.

Sunlight supports the increased disclosure requirements of this provision, which add to the transparency of Congressional actions.

TITLE II

THE LOBBYING TRANSPARENCY AND ACCOUNTABILITY ACT OF 2007

SEC. 211. QUARTERLY FILING OF LOBBYING DISCLOSURE REPORTS.

Lobbyists are to file quarterly instead of semiannually.

Sunlight believes monthly filing should be a minimum requirement. More frequent reporting would better ensure that the reports are made public prior to any action being taken on legislation.

SEC. 212. QUARTERLY REPORTS ON OTHER CONTRIBUTIONS.

The LDA is amended to provide that reports contain: (1) a list of all contributions over $200 made by the lobbyist to all federal candidates, PACs and party committees; (2) all fundraising events thrown by the lobbyist; (3) all bundled campaign contributions; (4) the name of the recipient and total money donated for an event or other honor for a Member of Congress or executive branch official; (5) all money paid for a retreat, conference etc. paid for by lobbyist and attended by a Member or executive branch official.

Sunlight strongly supports the increased disclosure required by this provision.

SEC. 214. PUBLIC DATABASE OF LOBBYING DISCLOSURE INFORMATION.

Electronically filed lobbyist reports are to be available online within 48 hours of filing. A searchable, sortable downloadable electronic database that contains the information from the lobbyist reports and links the information to FEC reports must be maintained.

Sunlight strongly supports this provision.

SEC. 215. DISCLOSURE BY REGISTERED LOBBYISTS OF ALL PAST EXECUTIVE AND CONGRESSIONAL EMPLOYMENT.

Disclosure of all past executive and congressional employment is required.

Sunlight supports this provision.

SEC. 218. DISCLOSURE OF ENFORCEMENT FOR NONCOMPLIANCE.

The Secretary of the Senate shall make publicly available the aggregate number of lobbyists and lobbying firms, referred to the United States Attorney for the District of

Columbia for noncompliance on a semi-annual basis. The United States Attorney shall report to the relevant Committees on a semi-annual basis the aggregate number of enforcement actions taken and the amount of fines.

Sunlight supports this provision.

SEC. 219. ELECTRONIC FILING OF LOBBYING DISCLOSURE REPORTS.

The LDA is amended to require that reports required shall be filed in electronic form. The Secretary of the Senate and the Clerk of the House of Representatives shall use the same electronic software for receipt and recording of filings under this Act.

Sunlight strongly supports this provision as it makes already public information available on the Internet.

SEC. 220. ELECTRONIC FILING AND PUBLIC DATABASE FOR LOBBYISTS FOR FOREIGN GOVERNMENTS.

The Foreign Agents Registration Act is amended to require electronic filing of registration statements and updates. The Attorney General shall maintain, and make available to the public over the Internet, without a fee or other access charge, in a searchable, sortable, and downloadable manner, an electronic database that includes the information contained in registration statements and updates filed under this Act; and directly links the information it contains to the information disclosed in reports filed with the FEC. Each registration statement and update filed in electronic form shall be made available for public inspection over the Internet not more than 48 hours after the registration statement or update is filed.

Sunlight strongly supports this provision as it makes already public information available on the Internet in a timely fashion.

SEC. 234. ANNUAL ETHICS COMMITTEES REPORTS.

The Committee on Standards of Official Conduct of the House and the Select Committee on Ethics of the Senate shall each issue an annual report describing the number of alleged violations of Senate or House rules; the number of violations that were dismissed; the number of complaints that were or are being investigated; and the number of letters of admonition issued or disciplinary actions taken.

Sunlight supports this provision.

TITLE IV--GENERAL PROVISIONS

SEC. 402. PUBLIC AVAILABILITY OF SENATE COMMITTEE AND SUBCOMMITTEE MEETINGS.

The Senate Rules are amended to provide that, except for closed meetings, each committee and subcommittee shall make publicly available through the Internet a video recording, audio recording, or transcript of any meeting not later than 14 business days after the meeting occurs.

Sunlight strongly supports this provision, as it goes to the core of ensuring the work of Congress is available and easily accessible. Sunlight supports the work of individual Committees that are making their hearings available over the Internet, but believes that a Rule is necessary in order to ensure that every Committee is making information available online, and that all of the Committees are acting in a consistent fashion.

SEC. 406. CONGRESSIONAL TRAVEL PUBLIC WEBSITE.

The Secretary of the Senate and the Clerk of the House shall each establish a free, publicly available website that contains information on all officially related congressional travel that is subject to disclosure. The website shall include a search engine; uniform categorization by Member, dates of travel, and any other common categories associated with congressional travel; and all forms filed in the Senate and the House relating to officially-related travel.

Sunlight strongly supports this amendment as it provides a method by which information about Members' travel is accessible to the public. This provision should be strengthened by providing that all required information is included on the website in a timely fashion, for example, 48 hours after the forms are filed or the travel has taken place, whichever is earlier.

THE HONEST LEADERSHIP AND OPEN GOVERNMENT ACT OF 2006

SEC. 701. PUBLIC AVAILABILITY OF FEDERAL CONTRACT AWARDS.

The Office of Federal Procurement Policy Act is amended to provide that not later than 14 days after the award of a contract by an executive agency, the head of the agency shall make publicly available, including by posting on the Internet in a searchable database, the following information with respect to the contract: The name and address of the contractor; the date of award of the contract; the number of offers received in response to the solicitation; the total amount of the contract; the contract type; the items, quantities, and any stated unit price of items or services to be procured under the contract; where applicable, the authority for using noncompetitive procedures; and the general reasons for selecting the contractor.

Sunlight strongly supports the Internet availability of this information.

SEC. 801. PRESIDENTIAL LIBRARIES.

Information about gifts to Presidential libraries shall be reported on a quarterly basis to the Administration, the Committee on Government Reform of the House o, and the Committee on Governmental Affairs of the Senate. The Archivist shall make available to the public through the Internet as soon as is practicable after each quarterly filing any information that is submitted.

Sunlight supports the goal of putting information regarding contributions to Presidential libraries online. Sunlight would encourage monthly, instead of quarterly reporting and would support strengthening the provision to require a prompt time certain in which the Archivist makes the information available.

The *Real* OMB Watch and Why It Wants to Violate Your First Amendment Rights

Part I

By Mark Fitzgibbons, GrassrootsFreedom.com

Only nine nonprofit organizations have been pushing to regulate grassroots speech and publication under the guise of lobbying reform. Eight, including Public Citizen, are Washington insiders and the ninth maintains a Washington office. The Senate voted 55 – 43 to strip Section 220 out of the lobbying reform bill, S. 1, before it passed, but the House is expected to introduce its version soon.

One of the nine Washington insiders is OMB Watch. Recently, OMB Watch said that it was "misinformation" that helped defeat Section 220, the grassroots provisions of the Senate lobbying reform bill.

To the contrary, it was OMB Watch spewing misinformation, and only because of a genuine grassroots surge **by citizens telling the truth** was the proposal supported by OMB Watch defeated. OMB Watch misrepresented the scope of the legislation. It has actually fought hard to regulate small nonprofit causes, while supporting loopholes for corporations and large labor unions in that same legislation.

OMB Watch is no grassroots organization. It appears not only to know very little about actual grassroots activity, but seems to hold citizen grassroots and the First Amendment in disregard if not contempt. OMB Watch claimed, based on press releases by one senator and two Washington insider groups, that the legislation wouldn't have done what the legislation actually said it would do **by its very terms**.

OMB Watch holds itself out as an organization that, among other things, represents nonprofits on First Amendment issues. And for which nonprofits does OMB Watch claim to speak? It seems OMB Watch did not have any following among nonprofits or citizens, for that matter, on this legislation.

Now they are backtracking, claiming that they may not have fully understood the extensive impact of the legislation. But they were not only supporting the legislation, but actively pushing and asking the public to support it. You don't have to be a lawyer to know that laws are enforced as written, and not how some Washington insiders "wish" the law to be. And since we're dealing with First Amendment rights, is it credible to suggest that citizens' rights are safe based on a few press releases by politicians instead of the language of statutes and legislation?

Is, then, OMB Watch being dishonest or just irresponsible?

Who Is OMB Watch?

OMB Watch is a 501(c)(3) nonprofit organization, which means contributions to it are tax deductible. And OMB Watch is actually not even its real name, but a "DBA," which stands for "doing business as." Its real name is Focus Project, Inc. That's public information available at Guidestar.org. Its offices are at 1742 Connecticut Ave, NW, Washington, DC, which is the wealthy Kalorama section of the city.

OMB Watch appears from its own graphs on its website to get about **only one percent** of its funding from individual donors, about five percent from "miscellaneous" sources, and **approximately 90 percent from foundations**. The remaining sources are **union donors**, organizational donors and earned revenue.

OMB Watch lists its sources of funds from foundations in this order: 1. Anonymous I, 2. Anonymous II, 3. Bauman Foundation, 4. Beldon Fund, 5. **Carnegie Corporation of New York**, 6. **Ford Foundation**, 7. Fund for Constitutional Government, 8. HKH Foundation, 9. **Charles Stewart Mott Foundation,** 10. Open Society Institute, 11. **Pacific Life**, 12. **Rockefeller Brothers Fund**, 13. The Scherman Foundation**,** and 14. **Sunlight Foundation**.

Without writing an expose on these sources, suffice it to say OMB Watch benefits from corporate money with a distinct ideological and political slant.

OMB Watch Board: Washington Is a Small Town, And OMB Watch Has the Big Special Interests

OMB Watch currently has 15 board members. **Three of the OMB Watch board members are from three of the largest, wealthiest labor unions in the United States**: the AFL-CIO, United Auto Workers, and AFSCME (the American Federation of State, County and Municipal Employees, the largest union for government employees). So 20 percent of the OMB Watch board consists of labor unions. This is an important factor in their agenda on this legislation, as explained below and more in Part II.

A review of the other board members of OMB Watch is very telling. One is with the Food Research and Action Center (FRAC). FRAC's own board consists of representatives from Victoria's Secret Direct, the Motion Picture Association of America, Nestle USA, AFSCME (again), the Grocery Manufacturers Association, United Food & Commercial Workers (another union) and the Food Marketing Institute (FMI). FMI and others on the FRAC board are big-industry lobbying associations.

Another OMB Watch board member is with the Center for American Progress (CAP), whose President is former Clinton advisor John Podesta, and whose key players include Clinton political operatives Carol M. Browner and Cheryl Mills. CAP reports $16.5 million in income for 2004, with $5 million in payroll. Its funding is secretive, but *The Washington Post* reported billionaires George Soros and Peter Lewis (Progressive Insurance) are likely sources.

Washington fixture Ellen Miller, now with another quietly funded organization, the Sunlight Foundation, is a board member of OMB Watch. She founded and is also on the board of the Center for Responsive Politics, whose major funders include OMB Watch-funders **Carnegie Corporation of New York** and **Ford Foundation**, plus Sunlight Foundation and Pew Charitable Trust. Ms. Miller also is credited as founding Public Campaign, whose agenda is publicly financed elections (as is one of the major agenda items of Public Citizen, one of the other eight supporters of the grassroots legislation).

Another link to the other proponents of regulating the grassroots is OMB Watch board member David Vladeck, the much-respected Georgetown law professor. For nearly two decades, Professor Vladeck handled Public Citizen's litigation efforts. Public Citizen, of course, has been one of the most outspoken of the nine proponents of the grassroots legislation, even taking credit for helping craft it.

The other board members of OMB Watch come from organizations comprised of, or with heavy ties to, corporations, labor unions, trade associations, lobbyists and Washington insiders. None appears to be representative, at least to any significant degree, of grassroots causes.

OMB Watch, both through its sources of funding and the makeup of its own board, represents **big corporate and labor union interests**, and is nearly as far as one can get in Washington from representing grassroots causes. In fact, OMB Watch is much closer to being "Astroturf," those artificial, industry created causes that purport to, but don't, represent citizens, than to legitimate nonprofit and other grassroots causes.

OMB Watch, therefore, is the antithesis of grassroots. How, then, can it claim to know anything about real grassroots causes, what they do, how they operate, the issues and burdens they face, etc.? OMB Watch has supported, and continues to support, legislation that harms nonprofits and the First Amendment rights of those causes and citizens.

Let's face it. OMB Watch works for big special interests that see the grassroots as the enemy to their own agendas.

What Is the Real Agenda, Then, of OMB Watch?

OMB Watch was shown that the grassroots legislation targets small nonprofit causes, bloggers, and others who communicate with the general public, but who do not have Washington-based lobbyists. It was proven to OMB Watch that what they were saying to the public to induce support was false. Instead of admitting error, OMB Watch chose to attack the messengers, hurling innuendo and trying to prejudice the public based not on the merits, but on who "caught" OMB Watch misleading the public.

If the legislation targeted Astroturf, as OMB Watch wanted the public to believe, OMB Watch could have continued to push that legislation. But the legislation didn't target

Astroturf. Instead, it targeted the rights of speech, publishing, association and petitioning the government, and the public outcry put a stop to that legislation in the Senate (so far!).

Now, this Washington-based special interest insider, OMB Watch, has offered a watered down version of the legislation. (And what happened to the pledge made by so many candidates in 2006 that they would put a stop to the practice of special interests writing legislation for Congress?) The new OMB Watch proposal still targets First Amendment rights of innocent nonprofits, small organizations, and others with no ties to Washington and the corruption there, yet is **still** not targeted at so-called Astroturf or some actual harm. To the contrary, it would still cause harm to small nonprofits, and would have a detrimental affect on First Amendment rights generally.

And guess what. The OMB Watch proposal still provides huge loopholes so that corporations and labor unions can spend unlimited amounts of money that would not be reported.

"Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people peaceably to . . . petition the Government for a redress of grievances."
– The First Amendment to the Constitution of the United States

Congressman Waxman advances grave new threat to citizens' 'right to petition' government officials

By Douglas Johnson and Susan T. Muskett, J.D.
National Right to Life Committee

Legfederal@aol.com, 202-626-8820

February 20, 2007

When a citizen expresses herself directly to an important federal government official – perhaps by sending an e-mail or a fax, or even in a direct conversation – should the name of that citizen and the topic of her communication be reported into a government-maintained database, accessible to the public?

Will the Executive Branch of government best serve the public interest when a member of the President's Cabinet must report into a public government database even the policy advice he or she receives from a spouse? When important policymakers get confidential advice only from other government officials?

Congressman Henry Waxman thinks so – and he is serious about making that the law.

Mr. Waxman, a Democrat who represents part of Hollywood, is the new chairman of the powerful Committee on Oversight and Government Reform of the U.S. House of Representatives. He is also the chief sponsor of the so-called "Executive Branch Reform Act" (H.R. 984), a bill approved 28-0 by his committee on February 14. The ranking Republican on the committee, Congressman Tom Davis of Virginia, is the lead cosponsor of the bill.

According to some reports, Mr. Waxman will ask House Democratic leaders to fold the bill into a much broader "ethics reform" bill, on which the House may act during March. (The Senate passed its version of "ethics reform" legislation, S. 1, in January; the Senate bill did not contain any provision comparable to H.R. 984.)

Waxman says that his bill "promotes openness and accountability in government by banning secret meetings between lobbyists representing special interests and senior government officials." (*CQ Today*, February 15, 2007) But, while some journalists were happy to simply paraphrase Mr. Waxman's characterization of the bill, examination of the legislation makes it plain that Mr. Waxman must regard virtually any citizen as a "lobbyist" if she is so bold as to express herself directly to a government official on a policy matter.

"Any Significant Contact"

Under H.R. 984, thousands of Executive Branch officials would be required to file quarterly reports containing the timing and substantive details of "any significant contact" they receive on a policy matter – not only from lobbyists, but from any "private party" – *a term defined in the bill to include "any person or entity" other than other government officials, or representatives of such officials such as congressional staff persons.*

The bill defines a "signficant contact" as any "oral or written communication (including electronic communication) . . . in which such private party seeks to influence official action by any officer or employee of the executive branch of the United States." The requirement would apply to communications whether they were one-way or two-way, and whether they were solicited or unsolicited. Every *e-mail, fax, letter, or voicemail* expressing a view on a policy matter would have to be reported. Every *conversation* in which any "private party" expressed herself to an official on a policy matter would have to be reported – whether the conversation took place in a formal meeting, or on the phone, or in a random encounter at a church or synagogue, or in a private conversation with a spouse.

For each such "significant contact," the covered official would be required to report "a summary of the nature of the contact," which would include at least the following information (and this list might be expanded in subsequent implementing regulations):

– "the name of each private party who had a significant contact with that official"

– "the date of the contact"

– "the subject matter of the contact and the specific executive branch action to which the contact relates"

The scope of topics to which this reporting requirement would apply – "official action by any officer or employee of the executive branch of the United States" – could hardly be more sweeping. This language is not even limited to the actions that are within the discretionary authority of the contacted official and his subordinates. So, if you mistakenly contact an official within the Department of the Interior about a matter that is actually handled by the Department of Homeland Security, no matter – the Interior Department official must dutifully report this "significant contact" anyway.

An extensive universe of officials and officers would be covered by these requirements. The covered categories are described in five numbered paragraphs of the bill, some of which are rather technical. Coverage includes positions of "policy-determining, policy-making, or *policy-advocating* character" (emphasis added) character throughout the Executive Branch, which would sweep in a substantial portion of the more than 9,000 political appointment slots that exist in current law. In addition, senior military officers down to one-star rank are covered (there are more than 900 of them).

Also covered are the entire "policy" staffs of the President and Vice President, except for their respective chiefs of staff. The President and Vice President themselves also are exempt. (See Appendix A for additional details on the covered categories.)

The reports would be filed with the Office of Government Ethics, which would be mandated to establish "computerized systems designed to minimize the burden of filing and maximize public access to reports filed under this title" and make "a publicly available list of all private parties who made a significant contact." The director of the Office of Government Ethics would be required to "where necessary, verify the accuracy, completeness, and timeliness of reports," and to notify the U.S. attorney for the District of Columbia of any official who fails to comply.

H.R. 984 contains substantial penalties for failure to report a "significant contact" from a "private party" on a policy matter: administrative sanctions "up to and including termination of employment" for any violation, and for anyone who "deliberately attempts to conceal a significant contact," a civil fine of up to $50,000 per infraction. Covered officials will also be mindful of the anticipated costs of mounting a legal defense against even an erroneous charge of noncompliance ("the process is the punishment," as they say).

What Would Change

With these severe penalties hanging over their heads, Executive Branch officials would rationally change their behavior in a number of ways – none of which would serve the cause of good government.

First, Executive Branch officials will begin spending a lot of time maintaining copious running records of names, dates, and subject matter of all communications that they receive on official actions, regardless of where they occur – whether it be in the official's office, at a public event, at a friend's Christmas party, or pillow talk with a spouse. Every substantive phone call, e-mail, or other contact from a "private party," solicited or unsolicited, would have to be logged, unless it fell into one of the narrow exceptions provided in the bill. (See Apprendix B for an explanation of the exceptions.)

This record keeping would prove to be so burdensome that it can be expected that officials would seek to reduce contact as much as possible with "private parties" – which is to say, from individual private citizens or representatives of organized groups of private citizens. Telephone calls would go unreturned, requests for meetings would be declined, e-mail addresses will be unpublished, and contact with outside individuals at events would be avoided as much as possible. As a result, executive branch officials charged with making national public policy would become ever more insulated from the people who their policies most directly affect.

Officials would take special pains to minimize contacts with representatives for politically controversial causes. Most Americans exercise their right to petition the government by joining like-minded citizen groups. The staff persons for such groups, particularly those associated with positions disfavored by the institutional news media or disfavored by powerful congressional

committee chairmen like Congressman Waxman, will find government officials less likely to communicate with them, for fear that the contact reports will be perceived as showing them too close to persons or groups who represent the disfavored cause.

One predictable effect of imposing this isolation on government officials will be to impede countless Americans from exercising their right to petition government officials on policy matters – a right guaranteed by the First Amendment. It would no longer be possible for a private citizen or representative of a group of private citizens to enjoy any degree of privacy when they send a communication on a policy matter to a government official, because the official will be required to report the contact. Once this is generally understood, many citizens will become more reluctant to exercise their constitutional right to petition as freely as they did before. The chilling effect will be especially severe for those Americans who privately advocate for causes disfavored by their own professional peers, social peers, family members, employers, or customers.

Cui Bono?

Another predictable effect would be to enhance the already considerable influence wielded by congressional committee chairmen such as Chairman Waxman – an influence often exercised entirely outside of the public eye. Contacts from Congressman Waxman or from any of his scores of staff persons are exempted by H.R. 984, even when they contain heavy-handed suggestions or demands as to the policy course the official should take.

Then too, the law is intended to generate information that *certain* "special interests" can use to browbeat public officials, generally for the purpose of advancing their own policy agendas. Politicians, advocates, and journalists with political axes to grind would comb through reports, impugning the actions of government officials based on who had sent them communications and how often, in order to shape public policy along the lines they prefer.

The bill would also hamstring government officials when they feel the need to actively seek advice from outside their own bureaucracies. Currently, a federal official is free to pick up the phone and consult anybody he wishes on a policy matter – perhaps his one-time college professor, or a scientist who heads a research laboratory in the city where he lived before joining the government, or someone who wrote an opinion piece that caught his attention, or his personal physician. But any such contact would be reportable under H.R. 984, unless the advice or information sought and received is already "publically [sic] available information." The individual contacted by the official would be aware that their conversation would now become a matter of public record. If any controversial matter is involved, the citizen might be unwilling to offer candid advice to the official, fearing negative ramifications for his business, his tenure prospects, or his family relationships, to cite just a few ways in which a "chilling effect" would occur.

(It should be noted here that certain Executive Branch officials at times operate in a manner parallel to judges, first receiving formal input from various parties and then making an administrative decision about a particular case or policy. But federal agencies already require that officials who are operating in such a quasi-judicial capacity must record and report *ex parte*

communications – that is, communications by which someone improperly tries to influence them outside of the formal administrative process. Outside of these special cases, senior federal officials are generally free to actively seek advice where they see fit, and to receive and consider unsolicited advice as they see fit. Mr. Waxman's bill is based on the dubious premise that such confidential advice is inherently suspect – unless, of course, it comes from a Member of Congress such as himself, or some other government official.)

Spouses Not Exempt

Even advice from spouses would be covered. In 1993, soon after President Clinton took office, the Hyde Amendment (the law that prohibits federal funding of most abortions) was up for renewal in Congress. The president was on record in support of re-establishing federal funding of abortion, so his policy advisors presented him with a memo suggesting different degrees of assertiveness in pursuing his policy in Congress. Rather than check off any of the options presented by his paid staff advisors, however, the President scrawled, "What does Hillary think [?]" We don't know what advice Hillary subsequently gave her husband on this matter, but it is very likely that the advice was given some weight. Yet, although Mr. Waxman's bill contains an explicit exception for the President and the Vice President, any other political appointee or high-ranking military officer who did what Mr. Clinton did in this case would be forced to list the "significant contact" with his wife, and the topic on which she gave the policy advice, on his next quarterly disclosure report.

In fact, the plain language of the bill would lead to any number of such patently absurd results. For example, if protestors were to wait patiently outside the State Department for the Secretary's limousine to drive by, so that they could hold up signs that succinctly convey to her their views on some aspect of American foreign policy (such as "U.S. Out of Iraq" or "Bomb Nuclear Reactors Now"), the Secretary would be well advised to log and report this "significant contact," even if she must report the communicators as "John and Jane Doe." After all, the communicators are clearly "private parties," they are clearly using "written communication . . . that . . . seeks to influence official action . . .," and their communication is directed specifically to a covered official, not to the general public.

Despite officials' efforts to reduce the volume of "substantial contacts," the law would open the door to all manner of manipulation and mischief. For example, if an advocacy group

anywhere on the ideological spectrum could obtain the voicemail or e-mail address of a covered government official, the group could essentially paralyze the official's office by using the Internet to generate tens of thousands of unsolicited "significant contacts," each voicing boilerplate disagreement with an agency's policy on any matter – each of which would have to be individually logged and reported. A big enough campaign of this type might nearly paralyze an official's office. At a minimum, the staff and time needed to accomplish the record keeping would be a huge waste of the taxpayer's money.

Congressman Waxman wants to sell his bill as an expansion of "government in the sunshine"– but what he really wants is the political equivalent of a tanning salon: a structure in which Executive Branch officials would be isolated from the real world, and then exposed to intense, artificial, and unhealthy radiation generated by privileged inside players such as himself.

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APPENDIX A

WHAT OFFICIALS WOULD BE COVERED BY H.R. 984?

The list of "covered executive branch officials" under H.R. 984 is expansive. It includes:

(A) those covered by the Executive Schedule at levels I through V ($131,400 to $180,100 annually as of Jan. 2005). It is not entirely clear to us how many of the over 9,000 federal political appointment slots would be covered under this salary-level criteria. (Many political appointees hold Senior Executive Service positions – these do not require Senate confirmation – that are paid at level IV or level V.) This issue may not be too important, because (C) and (D) below which would probably "capture" most political appointees, anyway.

(B) officers of the uniformed military of one-star general/admiral rank or above (of whom there are currently over 900);

(C) all executive branch "policy" jobs which fall within the description in 5 U.S.C. § 7511(b)(2)(B) of "[a] position [that] has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by . . . the Office of Personnel Management for a position that the Office has excepted from the competitive service;" and

(D) any "noncareer appointee," as defined by section 3132(a)(7) of Title 5, United States Code ("an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee"); and

(E) all "policy-determining, policy-making, or policy-advocating" employees in the Executive Office of the President and the Office of the Vice President, except the President, Vice President, and their respective chiefs of staff.

APPENDIX B

WHAT ARE THE EXCEPTIONS TO THE REQUIREMENTS OF H.R. 984?

H.R. 984 generally requires reporting of any "oral or written communication (including electronic communication)" in which any "private party" (defined as a person or entity, other than a government official) "seeks to influence official action by any officer or employee of the executive branch of the United States." Thus, this requirement applies not only to communications that urge the official himself to undertake some official action, but also to any call that is intended to influence any official action by anybody in the Executive Branch.

In further defining what this means, H.R. 984 incorporates most of the same exceptions that currently apply to registered federal lobbyists (under the Lobbying Disclosure Act of 1995). However, the Lobbying Disclosure Act applies only to persons who are paid to lobby federal officials and who spend more than 20% of their time on such lobbying contacts – but under H.R. 984, as explained above, the reporting requirements would apply to any contact received by a covered official from any "private party." The exceptions are for any communication that is:

> (I) made by a public official acting in the public official's official capacity;
>
> (ii) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;
>
> (iii) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;
>
> (iv) made on behalf of a government of a foreign country or a foreign political party and disclosed under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.);
>
> (v) a request for a meeting, a request for the status of an action, or any other similar administrative request, *if the request does not include an attempt to influence a covered executive branch official or a covered legislative branch official* [emphasis added]*;*
>
> (vi) made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act;
>
> (vii) testimony given before a committee, subcommittee, or task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;
>
> (viii) publicly available information provided in writing in response to an oral or written request by a covered executive branch official or a covered legislative

branch official for specific information [*but this exception applies "with respect to publically [sic] available information only*" *– on this point, the exception in H.R. 984 is actually narrower than the exception currently provided for registered federal lobbyists*];

(ix) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency, including any communication compelled by a Federal contract, grant, loan, permit, or license;

(x) made in response to a notice in the *Federal Register*, *Commerce Business Daily,* or other similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications;

(xi) not possible to report without disclosing information, the unauthorized disclosure of which is prohibited by law;

(xii) made to an official in an agency with regard to—
(I) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding; or
(II) a filing or proceeding that the Government is specifically required by statute or regulation to maintain or conduct on a confidential basis,
if that agency is charged with responsibility for such proceeding, inquiry, investigation, or filing;

(xiii) made in compliance with written agency procedures regarding an adjudication conducted by the agency under section 554 of title 5 or substantially similar provisions;

(xiv) a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;

(xv) a petition for agency action made in writing and required to be a matter of public record pursuant to established agency procedures;

(xvi) made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual, except that this clause does not apply to any communication with --
(I) a covered executive branch official, or
(II) a covered legislative branch official (other than the individual's elected Members of Congress or employees who work under such Members' direct supervision),
with respect to the formulation, modification, or adoption of private legislation for the relief of that individual;

> (xvii) a disclosure by an individual that is protected under the amendments made by the Whistleblower Protection Act of 1989, under the Inspector General Act of 1978, or under another provision of law;
>
> (xviii) made by --
> (I) a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under paragraph 2(A)(I) of section 6033(a) of title 26, or
> (II) a religious order that is exempt from filing a Federal income tax return under paragraph (2)(A)(iii) of such section 6033 (a); and
>
> (xix) between --
> (I) officials of a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act [15 U.S.C. 78c (a)(26)]) that is registered with or established by the Securities and Exchange Commission as required by that Act [15 U.S.C. 78a et seq.] or a similar organization that is designated by or registered with the Commodities Future Trading Commission as provided under the Commodity Exchange Act [7 U.S.C. 1 et seq.]; and
> (II) the Securities and Exchange Commission or the Commodities Future Trading Commission, respectively; relating to the regulatory responsibilities of such organization under that Act.

In addition to the exceptions quoted above, which are drawn from the Lobbying Disclosure Act, H.R. 984 says that the required reports need not contain any information that is exempt from disclosure under the Freedom of Information Act [5 U.S. Code 552(b)]. The FOIA exemptions apply to information classified for national security reasons, information about law enforcement investigations, medical records and other personal information about agency personnel, and other matters that have no bearing on typical contacts from citizens and representatives of citizen groups in which opinions are expressed on policy matters. Moreover, H.R. 984 does not say that "significant contacts" about such sensitive matters are exempt from the bill's reporting requirement, but only that the covered official's report on such contacts need not include the specific information that is exempt from disclosure under FOIA.

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