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LOBBY REFORM LEGISLATION

HEARINGS

BEFORE THE

COMMITTEE ON GOVERNMENT OPERATIONS UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 774

TO REGULATE LOBBYING AND RELATED ACTIVITIES

S. 815

TO PROVIDE FOR THE PUBLIC DISCLOSURE OF LOBBYING ACTIVITIES WITH RESPECT TO CONGRESS AND THE EXECUTIVE BRANCH, AND FOR OTHER PURPOSES

S. 2068

TO PROVIDE FOR PUBLIC DISCLOSURE OF LOBBYING ACTIVITIES TO INFLUENCE DECISIONS IN THE CONGRESS AND THE EXECUTIVE BRANCH, AND FOR OTHER PURPOSES

S. 2167

TO PROVIDE FOR THE RECORDING AND PUBLIC DISCLOSURE OF LOBBYING ACTIVITIES DIRECTED AT THE CONGRESS AND THE EXECUTVE BRANCH, AND FOR OTHER PURPOSES

S. 2477

TO PROVIDE MORE EFFECTIVE PUBLIC DISCLOSURE OF CERTAIN LOBBYING ACTIVITIES TO INFLUENCE ISSUES BEFORE THE CONGRESS AND THE EXECUTIVE BRANCH, AND FOR OTHER PURPOSES

APRIL 22, MAY 14, 15, NOVEMBER 4, 5, AND 6, 1975

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LOBBY REFORM LEGISLATION

TUESDAY, APRIL 22, 1975

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met at 9:45 a.m., in room 3302, Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman) presiding.

Members present: Senators Ribicoff, Percy, and Brock.

Staff present: Richard Wegman, chief counsel and staff director; Paul Hoff, counsel; Marilyn Harris, chief clerk; and Elizabeth Preast, assistant chief clerk.

Chairman RIBICOFF. The committee will be in order.

We welcome Senator Kennedy and Senator Stafford who have taken such a lead in the forefront of this legislation.

After a brief opening statement, we will proceed.

OPENING STATEMENT OF SENATOR RIBICOFF

The committee begins consideration today of much-needed legislation to reform the Federal lobbying laws. The evident failure of the present laws makes it imperative that this committee act promptly on new legislation.

I think that we all agree that no right is more fundamental to American democracy than the right of the individual to petition his government. Any legislation enacted by Congress must preserve this right.

But to protect the democratic process itself, and assure public confidence in it, the lobbyist must work in the open. His work must not be cloaked in secrecy. Secrecy inevitably spreads public suspicion. Secrecy helps disguise the voice of a single special interest as the voice of the general public.

The Federal Lobbying Act of 1946 fails to assure this openness. The act has failed because it is outdated, incomplete, and vague in its wording, and unenforced in its application.

The present law is outdated because it fails to cover the subtle and indirect ways used to influence the Government's decisionmaking process. The stream of letters or mailgrams we all receive may be a representative and spontaneous reflection of the public's view, or it may only represent a secretly generated campaign by just one special interest, Congress and the public have a right to know which it is. But the present law discloses virtually nothing.

The present law is incomplete because it does not regulate lobbying before executive branch agencies, yet most of the important decisions are made by the agencies. The executive branch decides how much a consumer pays for his milk, or how safe he is in the DC–10 airplane

that he rides. The public has a right to know when special interests meet with agency officials to influence these decisions.

The present law is overly vague because it fails to clearly specify which persons, and which expenditures, are covered.

In 1973 registered lobbyists reported spending $10 million on their activities. However, this only begins to tell the story. We can only begin to guess how many millions more are actually spent by special interests to lobby their Government.

The present law is unenforced by the Secretary of the Senate, the Clerk of the House, and the Justice Department. These officials lack the necessary investigatory powers. At the same time, they do not refer cases to the Justice Department for investigation. The Justice Department investigates complaints referred to it, but it does not actively initiate investigations on its own. Since 1946, the Justice Department has apparently initiated only five prosecutions under the act.

The report the General Accounting Office has just submitted to me dramatically illustrates how inadequately the present law is enforced.

The Justice Department's failure to fully enforce the lobbying laws is intolerable. I will insist that the Attorney General personally explain to this committee the Department's present enforcement practices. I will expect him to recommend ways to improve the lobbying laws.

Senate bills S. 774 and S. 815 are similar in many respects. Both bills seek to plug the loopholes in the present law, extend coverage to the executive branch, and assure effective enforcement of the law. Both bills have strong support in both the House and the Senate.

It is my intent that in the coming weeks this committee will hold additional hearings to permit business, labor, and other interests to testify. Legal and practical questions must be resolved before new legislation can be enacted.

But the country has relied on the 1946 act far too long.

It is now time for Congress to act.

CHAIRMAN RIBICOFF. Senator Percy.

OPENING STATEMENT OF SENATOR PERCY

Senate PERCY. Mr. Chairman, I am delighted that we are opening hearings today on laws regulating lobbying. The more accountable we can make Congress and the executive branch to the American people and the less subject to special interests, the better the public interest will be served. We have taken notable strides in the past couple of years to open up the processes of government with passage of the Freedom of Information Act and opening up more congressional committee meetings to the public.

But there is one vast area of activity in the executive and legislative branches which remains shrouded in a veil of secrecy that the American people are only dimly aware of at best. That is the area of lobbying and special interest contacts with the Congress and executive branch. Current law, the 1946 Regulation of Lobbying Act, is deficient in that it narrowly defines what a lobbyist is; it does not cover lobbying activities unless the Member of Congress is contacted directly by the lobbyist; it does not cover those who lobby the executive branch; and, from what I can see, there is virtually no enforcement of the law.

Senator Stafford and Senator Kennedy have long pointed out the abuses in this area and have suggested legislation which I have supported along with my distinguished colleague, Senator Ribicoff.

I have also introduced separate legislation with Senator Ribicoff, originally introduced in the House by Congressman Tom Railsback, to bring lobbying of Congress and the executive branch out in the open by requiring full diclosure of lobbying activties in those branches.

The purpose of the legislation before this committee is not to prohibit lobbying, as, indeed, lobbyists do on many occasions perform extremely useful functions in the national interest. They can be tapped for expert information on problems, they can analyze the impact of proposed legislation on their areas of concern, and they are an effective vehicle for representation of the interest group they represent. They perform effectively and well in the spirit envisioned by one of our Founding Fathers, James Madison, in his discussion of "factions" in the "Federalist Papers." This legislation also is not directed against any particular type of lobbyist. It would cover all types of lobbyists—business, labor, public interest groups, and all others who wish to represent their views to Congress and the executive branch.

These legislative proposals have one simple purpose—to bring those activities out in the open. They are not designed or intended to in any way discourage legitimate lobbying activties which we all consider constructive and even vital to the operation of the Congress.

My legislation defines lobbying broadly and covers most attempts to influence either legislation or executive actions. It calls for comprehensive disclosure requirements on the activities and finances of lobbyists, of those who employ lobbyists, and of these who solicit others to lobby. It provides for reports from lobbyists on the sources and amount of their income, their expenditures, the names of officials in the government they have contacted, the bills or activities they have tried to influence, and any contributions or loans they have made to public officials.

In addition, officials of the executive branch would log their contacts with lobbyists and make those logs available for public inspection.

To make the bill meaningful, the Federal Election Commission is empowered to monitor the law and criminal sanctions are provided for willful falsification of any reports.

Mr. Chairman, the bill I have introduced has already been introduced in the House by Congressmen Railsback and Kastenmeier, and already has approximately 130 cosponsors.

Mr. Chairman. I do not think that the authors of any of the bills before us today think that their bills are perfect in all respects. We need extensive hearings to hear from all segments of the population which would be affected by these bills. We need Federal agency testimony. We also need testimony from business, labor and public interest groups. We obviously also need to solicit the views of our colleagues in the Congress who have an obvious interest in such legislation. Only when we have completed an extensive hearing process do I think we will be able to determine what final legislation is advisable and necessary. I keep an open mind on our final product.

I think the witnesses today will help us make a good start toward understanding the deficiencies in the current law and giving us suggestions for changes in that law. I look forward to the testimony given here today.

We have committed ourselves to Senator Kennedy and Senator Stafford to have early hearings on their legislation, and I am very

appreciative of your scheduling this promptly. I think these are important hearings because I think the American people have a good reason to believe that Congress and the executive branch should be accountable to them. Certainly, if anything is carried on in a way that is sub rosa, or undercover, the people then are not as well informed as they should be.

The chairman has already reiterated some of the deficiencies of our present law, which has long been pointed out by Senator Stafford, and Senator Kennedy who have been in the forefront of this movement for a long time.

Certainly Senator Ribicoff and I are very pleased indeed to be cosponsoring their legislation. We have benefited from their counsel and the hearings that have been held in the past. We have introduced a piece of legislation ourselves for purposes of discussion, but without any pride of authorship whatsoever. We simply want to bring lobbying that is carried on in the Congress and in the executive branch out in the open through a full disclosure.

Many times when young children are down here, all of us try to spend as much time as we can with groups of children when they come down, they hear this word "lobbyist." I get a lot of questions on "What is a lobbyist?" It almost has a sinister connotation such as a connotation that is put on a person when he is called a politician rather than a statesman. I refer these young people generally back to the studies that I made, because the Founding Fathers talked in there, I think it was Federal Paper 10, about facts in America. This is the way we really operate.

Farmers have a right to have their voice heard. Certainly business and labor has a right. Which points out that some of the largest lobbies in Washington are respected organizations such as Common Cause and the National Education Association, that puts a little different connotation on it so far as young people who are down here studying government are concerned.

But what the differentiations we make is that many times certain lobbying activities want to be carried on in the dark. They don't want it known what they are doing. They don't want to disclose it, where the organizations that I have mentioned for the most part are quite happy to have it right out in the open.

And Farm Bureau, it never hesitated, when they are for a piece of legislation, they let it be known loud and clear. So does Common Cause and National Education Association.

What we are trying to do in our legislation is define lobbying broadly that covers most attempts to influence either legislation or executive action. It calls for comprehensive disclosure requirements on the activities and finances of lobbyists, of those who employ lobbyists, and of those who solicit others to lobby. It provides reports on lobbies and sources of their income and expenditures, the names of officials in the Government that have been contacted, bills and activities they have tried to influence, and any contributions or loans they have made to public officials.

I know I have had many lobbying organizations say, "This is going to add to our cost. This is burdensome. This is Government meddling again." And so forth.

Sure, reports and accountability is a pain in the neck. It is a pain in the neck for us. But we think it is good, commonsense also.

We feel so much has been disclosed in recent years of the wrongdoing and the sinister connotations of influence in Government that those organizations will have to put up with a little more paperwork and a little more accountability, and we hope a little more sunshine, the good ones, in order to root out and expose to the light of day those whose purposes are not what you might consider noble.

I believe that the witnesses that we have before us today, and that will be following them, are among the most knowledgeable that we could have here. And we welcome both of our very distinguished colleagues. This could not be a greater demonstration of the bipartisan nature of the approach we intend to take in creating and reporting out legislation from the committee. I think we can take very prompt action.

OPENING STATEMENT OF SENATOR BROCK

Senator BROCK. I would like to thank the chairman, Senator Ribicoff, for calling these hearings and providing an opportunity to comment on S. 815 and S. 774.

The purpose of lobbying legislation is to provide for the disclosure, reporting, and registration of lobbying activities. I support the basic intentions of the Open Government Act of 1975.

The 1946 Lobbying Act and the subsequent Supreme Court decision in the *Harriss* case do not effectively handle the problems of lobbying. A look at the lobbying regulation and activities since 1946 shows the failure of the present law. Early in 1972, the Association of American Railroads initiated a million dollar public relations campaign in support of the Surface Transportation Act, and the association reported a lobbying expenditure of only $4,972.13. The El Paso Natural Gas Co. did not report any lobbying expenditures in 1971 despite the fact that the company spent $839,862 "for purposes of influencing public opinion." Existing provisions allow individuals and organizations to spend large amounts of money for the purpose of influencing governmental decisions, without thorough reporting of expenditures, and in some cases, with no reporting at all. Can we, as individuals entrusted with decisionmaking powers, accurately assess the goals and needs for legislation without knowing the source of the information and opinions we receive?

A publication by the Congressional Quarterly, *The Washington Lobby*, lists several major loopholes of the 1946 law as interpreted by the *Harriss* decision. According to the Court, the 1946 law does not cover activities to influence legislation unless the money spent is solicited, collected, or received for the purpose of influencing legislation. Thus, individuals and organizations may expend their own funds to finance activities designed to influence legislation and not be subject to the requirements of the present law.

The term "principal purpose" provides another loophole. Organizations argue that they are not subject to the law because the principal purpose of the money they collected or received is not to influence Congress. This interpretation presents a major shortcoming that should be corrected in any new legislation.

Only direct contacts to Members of Congress are subject to the provisions of the law. This weakness allows companies such as the El Paso Natural Gas Co. to spend nearly a million dollars to influence the public and not report this large expenditure.

Still another loophole allows each organization or lobbyist to determine, more or less for himself, the portion of total expenditures attributable to lobbying. As a result powerful interest groups may report only a small sum of money as being spent for influencing legislation.

The present law deals only with the activities influencing Congress. The executive branch and administrative agencies make many decisions and regulations affecting individuals and organizations, and these departments are subject to the same lobbying pressures as Congress. Yet, these activities do not fall under regulation. We must address ourselves to the propriety of regulating executive lobbying.

Presently, no one has the authority to investigate the truthfulness of lobbying registration and reports or to seek enforcement of the required provisions. A recently released report by the General Accounting Office, requested by Senator Ribicoff, shows how ineffective the lobbying law is as a result of this oversight. Forty-eight percent of 1,920 quarterly lobbying reports filed for the third quarter of 1974 were found to be incomplete. What good is reporting if so many reports are incomplete and enforcement ineffective?

In general, we must adequately deal with the constitutional problems inherent in lobbying legislation. Disclosure must not infringe upon the privacy of individuals and organizations nor overburden persons with paperwork. The amount of information we seek should be relevant and only detailed enough to further the goals of the act. By broadening the coverage of lobbying laws we necessarily expand the number of persons subject to the provisions of the law, but we also risk extending coverage to persons who should not or need not be included.

I am also concerned about several specific provisions of the bill. I would prefer to see the administrative and enforcement powers placed with the General Accounting Office rather than the Federal Election Commission. Constitutional problems may arise by giving overly broad prosecutorial powers to a legislative body.

The definition of a lobbyist needs improvement. The expenditure and income levels are too low, and we must not replace a vague term, "principal purpose," with an equally vague term "substantial purpose." Defining a lobbyist by a certain number of lobbying contacts presents severe administrative and enforcement problems. Assuming this provision remains, serious considerations should be given to the exception of contacts between a person and the congressional representative of his district.

Including the total income of a lobbyist in the required records and reports does not serve a productive purpose. Only income relating to lobbying should be reported for purposes of this bill.

The various loopholes and weaknesses of the present lobbying law must be corrected, and for this reason I sponsored the Open Government Act of 1975. However, I do have strong reservations about certain provisions of the bill, and the legislation must receive careful consideration in this committee. I hope today's hearings will be the first of several such sessions. This bill presents far too many subtle and complex issues for a cursory examination.

Chairman RIBICOFF. Senator Kennedy and Senator Stafford, do you have any preference as to how you will proceed?

TESTIMONY OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT, AND HON. EDWARD M. KENNEDY, U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator STAFFORD. Thank you, Mr. Chairman. I want to express my appreciation, and Senator Kennedy's for this opportunity to appear before this distinguished committee and testify in connection with S. 815.

I want to advise the committee that, in addition to yourself, Mr. Chairman, and the ranking minority members, Senator Percy, Senator Brock, Senator Clark, Senator Tunney, Senator Biden, Senator Lahey, Senator Mathias, Senator McGovern, Senator Bayh, Senator Beall, Senator Humphrey, Senator Proxmire, Senator Haskell, Senator Abourezk, Senator Moss, Senator Dole, and Senator Domenici, are now cosponsors of S. 815, one of the bills in front of this committee.

This has been a long-time interest of mine, Mr. Chairman. I was on the House Ethics Committee, officially called the House Committee on Standards of Official Conduct, before I came to the Senate. There we drafted a bill covering lobbying activities, and finally got to hearings on it some years ago. But we were unable at that time to generate enough interest to move the bill beyond the committee.

I think today there is a great deal more interest in lobbying legislation, Mr. Chairman, as your own statement, and that of Senator Percy's has indicated. And that now is a time when the American people want lobbying to be conducted in the full light of day.

S. 815 is not designed to curtail lobbying. The full right of petition of the Congress and of the Government is recognized. It is designed to bring lobbying completely into the open, as you suggested, Mr. Chairman, in your opening remarks. This bill is designed to replace the outmoded current legislation on lobbying, which you also noted in your opening remarks for the committee meeting this morning.

Since both the chairman, the ranking members, and now Senator Brock, who is a member of the committee, and is also a cosponsor of this legislation—all of your names on it—this Senator will not attempt to describe to you in detail legislation of which you are the cosponsors, and simply confine himself to saying that we are highly gratified that the committee is at this point undertaking these hearings.

We look forward to the procedures in the hearings, to the witnesses we believe will buttress the case for this bill and companion bills.

We recognize our bill is not perfect. It is quite possible that the committee will find some areas in which the committee will wish to improve the bill before it has completed its work. But we believe it is a good vehicle upon which the committee can embark its considerations.

We look forward to the result, and we believe that with the help of this committee, legislation which will not curtail but will lay out the operations of lobbyists so that the public can understand what lobbyist has visited what member of the Congress, or what member of the Federal executive department, how much was spent and for

what purposes, and who paid for the lobbying can all be exposed so that the public will have a complete understanding of this phase of the activities of the National Government.

Mr. Chairman, in view of time constraints, I will yield in favor of my distinguished colleague, Senator Kennedy.

Senator KENNEDY. Thank you very much, Senator Stafford and Mr. Chairman and members of the committee. I too want to express my appreciation to you, Mr. Chairman, Senator Percy, Senator Brock, and the other members of the committee for calling these hearings and for the strong statement of the committee that you have made here this morning, Mr. Chairman, and the other members of the committee, which is typical of the kind of interest that this committee has had in issue after issue, which are attempting to make both the Congress and the institution of the Congress more responsive to the needs and demands of the American people.

This is an entirely appropriate piece of legislation that we are considering. I would like to think it is a continuation of the process that has been made in recent times on a number of different measures that have passed the Congress, that will make Congress and the executive more accountable to the people.

I think that the Election Reform Act the Congress passed last year, I think that the Freedom of Information Act which Congress passed last year, I think the work that is being done in the House and Senate on the Budget Committee, the Consumer Protection Act, which is now on the calendar, this is an important agenda, and this committee has made valuable contributions to the development of it.

Now, once again, you are focusing on an area of great need for our country and for the Congress. As you pointed out, Mr. Chairman, and, Senator Percy, the current lobbying laws are a national scandal, national disgrace, as obsolute as the pony express or the model T.

Day after day armies of lobbyists patrol the corridors of Congress and every Federal agency. Vast amounts of influence and money are spent in secret ways for secret purposes, and many private interests are rich and powerful, and their secret operations corrupt the public interest.

The time has come to end that undue influence over the executive branch and really over the Congress. And too often we have allowed the voice of the people to be silenced by a special interest group clamoring for favored treatment.

It was entirely appropriate, Mr. Chairman, for you to point out that the constitutional protections which exist upon the activity of lobbying, and certainly those that support this legislation do not intend to prohibit lobbying, do not intend to regulate it, but, as you point out, only bring it to the light of day.

Perhaps, Mr. Chairman, we can just look back over the past few weeks and see the kind of extraordinary activities that have taken place in the Congress and House of Representatives on the important measure of the tax cut. We saw the lobbying that was being done at that time by the ATT, spent in a successful effort, to delete the $100 million ceiling imposed on the investment credit, and the enormous activity that was being done at that time by the industrial oil dealers in terms of insuring that their provisions were going to be written

into the oil depletion amendment, the efforts being made by Lockheed and Pan American and even Chrysler in terms of the special provisions that were being considered on the floor of the U.S. Senate.

I think these are all, as we would all recognize, legitimate functions. But it is important, I think, as my colleague has pointed out, and the rest, that we have the kind of public awareness and scrutiny which is so essential in terms of public accountability.

The essential aspects of our legislation is, one, to insure that the executive branch is covered; two, to change the word from the definition of lobbying to "all significant contacts." We believe this is an important change from the primary contacts or primary purposes of lobbyists to the substantial purpose for lobbying. We think this is an important change.

Also to entrust the enforcement of the act to the Federal Elections Commission with beefed up powers. That Commission, of course, as we know, has been appointed. It has new responsibilities. Many of these responsibilities, we think, are closely identified with the thrust and purpose of this act.

So in these areas we think the legislation that we have offered here moves as substantially down the road in getting a handle on this issue.

We provide, as you do, in our own legislation, for an incomes test as well as an expenditures test, a certain amount of money coming in, $250 per quarter, $500 per year coming in or being expended. We also have the oral communications test. We feel that with these different combinations that we can effect the activities which need to be identified and need to be made public.

We think that in this particular area, particularly in the substantial purpose test, that there is some difference with our own legislation which has attempted to try and find various percentages and see, if you have a percentage of income or expenditure that falls within even the $250, we do feel a substantial performance test would really carry through the thrust of the purpose of which I think all of us want to achieve in terms of lobbying legislation.

There is also the disclosure of benefits under the provisions of this act. So, Mr. Chairman, we do feel that this legislation is important. It is, we feel, of great significance. We are delighted that it is receiving the attention that it has from this committe. It is legislation which is long overdue. We believe it is constitutional, that the various Supreme Court decisions, *Harriss* case, primarily, has invited the Congress to participate in the development of this legislation.

The Congress has not accepted that challenge until you, Mr. Chairman, and the members of this committee, and Senator Stafford, who has been interested in this, I think, probably longer than any Member of the Congress, has really focused the attention on this legislation. We are hopeful it will be acted on expeditiously, and we are delighted to cooperate in every way we possibly can to insure it does pass.

Chairman RIBICOFF. I have very few questions.

Senator Kennedy, you have been holding some very interesting hearings on your Subcommittee on Administrative Practices and Procedures. You have stated that, in your CAB investigation, I think the future is correct, 769 contacts were made in 1974 by industry representatives which did not include social contacts.

Then you went on in your hearings on the FDA. You disclosed that FDA made substantial changes concerning the safety and effectiveness of new drugs after private meetings between FDA administrators and drug company officials.

How do you see this legislation, for example, affecting these two investigations of yours?

Senator KENNEDY. Well, Mr. Chairman, this raises an extremely important issue. We do have before the Administrative Practices Committee, Logging Act, which we have held our first hearings on, which would provide the opportunity for, and requirements for, the recording of contacts with executive agencies and primarily the regulatory agencies. Some agencies are already doing an absolutely magnificent job. The Consumer Products Safety Agency is probably a model for Government day logging, an absolutely outstanding job, without really undue, I think, administrative requirements or burdens or even cost.

Other agencies vary in terms of their performance, and we are exceedingly hopeful that we will have action on that legislation.

It is true that it does not cover the Congress, which it does pose a slightly different situation, although it does seem to me that we might even consider extending the concept of the principles even to Congress.

Obviously, the primary areas is the various regulatory agencies and the executive branch.

I am hopeful that we can get a logging legislation that would be meaningful in terms of responsiveness before the Senate in the next several weeks.

Chairman RIBICOFF. Now, all of us, you, Senator Kennedy, you, Senator Stafford, Senator Brock, and myself, not a day goes by that some industry in our own State, or a constituent who has a problem with some Federal agency, legitimate, trying to cut through the red-tape, asks for our help to set up appointments with these agencies to discuss their problem. Do you foresee this legislation making it onerous for a business or an individual to come to Washington to discuss their problems with the Federal agency.

Senator KENNEDY. Well, I can say, Mr. Chairman, in asking that specific question as to the members of the board, Consumers Product Safety, for example, they have indicated, and now with the Food and Drug having developed some additional regulations and they indicate, at the outset of the conversation, that they are going to have to log the contact. They have found that, in terms of their relationship with the Congress and with Congressmen, that it has been well understood, and they have felt there has not been any kind of reduction or diminution of interest and legitimate interest in Members of the Congress.

Quite frankly, there has been a greater appreciation for the integrity of the agency itself in making these contacts public. We have seen in the course of our hearings, even though they have only been preliminary hearings, that these kinds of requirements have worked and are working.

It varies extensively now between the various regulatory agencies who are requiring any kind of logging provisions. We are hoping, as a result of examining many of the regulatory agencies, that we can

try and achieve the objective without providing an undue kind of a burden.

But this kind of legislation, I think, is very necessary.

Chairman RIBICOFF. In other words, there would be no restriction if X manufacturer from the State of Connecticut had to make a trip to discuss a problem with one of the Federal agencies. He would not come within the purview of your lobbying act, would he?

Senator KENNEDY. Well, with regard to the logging provisions, he would.

Chairman RIBICOFF. He would not have to register as a lobbyist. He is coming down with a specific problem affecting his business and he is an officer of that company, and he has that problem and he has a right to talk to a Federal agency. He is not a lobbyist then, is he?

Senator KENNEDY. If he falls within the various criteria here. There are really two different issues here. One is the logging provisions; the other, lobbying provisions. They are separate provisions obviously, though they are focused in on the same issue. If they fall within these particular kind of requirements, then it would fall within the lobbying provision. If he contacted the various agencies and we passed a logging bill, it would fall within the logging provisions as well.

Chairman RIBICOFF. What I think we have to be concerned with, an officer who is on salary with a company, who has a problem and he does not get extra compensation, he gets on a plane and comes to Washington, you make an appointment with him with an agency, does his business, and goes home again.

Senator KENNEDY. He does not fall within that.

Chairman RIBICOFF. I think we have to be very careful.

Senator STAFFORD. Mr. Chairman, he would have to make eight oral contacts with Members of the Congress or Federal agencies in any given quarter before he fell under one of the three criteria for determining whether or not he was a lobbyist.

Chairman RIBICOFF. In other words, there are eight Members of the Connecticut delegation, two Senators and six Congressmen. If there was an issue that was statewide, which there often is, you will get a call from some industry—to myself, let us say—when you get the delegation together in your office, we would like to discuss a problem. So there will be eight Members. In other words, if we talked in my office with the eight Members of the Connecticut delegation, would he then be a lobbyist?

Senator STAFFORD. He might then fall within the third of the three definitions of a lobbyist, which appear in this bill.

We picked out eight as a reasonable number. Usually an officer of a corporation that has business in Washington is not going to—as an incident to his executive position with the corporation—be making eight visits to Washington to talk with Members of the Congress or Federal agencies in the course of any single quarter.

Chairman RIBICOFF. You take during the last few years, the three of us have had problems concerning the high cost of imported oil. And the independent oil dealers or the utilities have asked to meet with the various delegations of the New England States. There were more than eight and there might only be one meeting. Would the officer of the utility company then have to register as a lobbyist?

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Senator KENNEDY. No, he would not, Mr. Chairman. We want to make sure that we understand that that does not apply to any written communications. I think most of us, in terms of the practical realities, are depending upon written communications, so there would not be any kind of requirement.

We have tried to indicate that anything that is written is not covered because if it is written, it is understood what the particular positions are.

All we are trying to do is, people obviously have strong views and positions and they should be covered, but the writing would not be so included.

Chairman RIBICOFF. In other words, I think what we have to make sure, that the group meeting would not be covered.

Senator KENNEDY. Exactly. I think that can be made very clear and should be made very clear. I think the test that we have would indicate that it would not so include that individual. But there may be some better ways of insuring that protection.

Chairman RIBICOFF. It is your intention, too, in your bills, to cover public interest groups as well as special interest groups. Is that not so?

Senator KENNEDY. That is so.

Chairman RIBICOFF. In other words, a public interest group should be willing to make its activities known to the public and Congress just as much as a special interest group.

Senator KENNEDY. I think probably—I think they are probably the groups that are doing it. Certainly, now, Common Cause, in terms of compliance with the 1946 act, probably have greater compliance with both the specific letter of the law and intention of the law than probably any other group. It is interesting that they show about twice as much, in terms of lobbying activity, than any other group.

I think any of us in this business would understand that even their vigorous activities on other legislation, we hear a lot from other groups.

Chairman RIBICOFF. My staff informs me, I don't know this personally, that Mr. Nader objects to this legislation. Is there any reason why Mr. Nader's group should be excluded?

Senator KENNEDY. I know of none.

Chairman RIBICOFF. Senator Percy.

Senator PERCY. I would like to give each of you a chance to comment on the pluses of lobbying. The implications of the legislation before us is that lobbying is not desirable. I have tried to point out we all rely upon lobbyists for research, for drafting legislation, for helping us promote legislation that we believe in. I have found lobbying groups have been extraordinarily helpful in making certain that laws that are passed are implemented. Would either of you care to comment on the positive approach lobbying can make and its role in Government so you're both on record as not in anyway just looking at the negative side of it.

Senator STAFFORD. Mr. Chairman and Senator Percy, we started by saying that this bill, of course, makes no effort to curtail lobbying. We recognize the right to lobby. We agree that lobbying often serves a constructive purpose. What we are trying to do is to lay lobbying activities out in front of the public gaze.

Senator Kennedy will speak for himself, but in the opinion of this Senator, one of the basic reasons for doing so is because when lobbying does occur out of the public gaze, there is a suspicion which arises that something improper may be happening. Now, that suspicion may be entirely unjustified. In most lobbying cases it would be. But as long as it is done in private and in secret, a suspicion that something improper might occur exists.

It is our desire to get rid of the possibility of suspicion arising that lobbying has been conducted in an improper way. We believe this will contribute to the restored faith of the American people in their government at a time when we are taking other steps to lay all of the operations of government out so that people can see what is being done in their behalf. That is the basic reason for this legislation in the opinion of this Senator.

Senator Kennedy. I just hope to be incorporated in Senator Stafford's remarks. I agree with him completely. And the importance of legitimate lobbying activity provides for any representative and any representative body. As he pointed out, we are just interested in the public knowledge, awareness, and understanding of these activities.

Senator Percy. I would like to mention just a few hypothetical cases. We have tried, in the campaign election laws, to better regulate obvious attempts to influence candidates for public office by requiring public disclosure of their contributors and so forth.

How about a situation where the American Banking Association gives a convention and provides fairly lavish entertainment for members of the banking committee staff, including perhaps transportation. I think this is a hypothetical case. I do not know whether they do or do not provide transportation. Under the convention atmosphere of Palm Beach or Miami, or whatever it may be, a little business on banking legislation and so forth may be talked about. Do we call this lobbying? And how do you report such incidents? Does either one of our bills provide for somehow making such activities accountable? And should they be?

Senator Stafford. Senator Percy, there is language in the bill, S. 815, which requires lobbyists to file quarterly reports covering lobbying activities during any quarter. It also requires a lobbyist to include in his reports any expenditures made to, or for, any officer of Congress or the executive branch if the expenditure exceeds $25 or if the total expenditures for such purposes exceed $100 in a year. This provision applies to gifts, lunches, private plane trips, and other benefits provided directly or indirectly to Federal employees.

It is possible that the situation you describe might fall within that definition.

Senator Kennedy. I think the more difficult situation, Senator, is the question where they run in—any of us are invited to a variety of social events where this kind of contact is made. We run into that in the logging legislation. If it is a member of the CAB and someone comes up and speaks to him just casually. It is like the Consumer Products Safety. They have established a guideline so all members of the board know exactly what is the expected conduct at any kind of social event.

There will be these kinds of gray areas which do present some difficulty.

But I think, as a result of these hearings, that you can establish some guidelines even in those gray areas. I think the particular example you have given is covered very carefully in this legislation.

But the others, the sort of informal, casual, are real problems that are the gray areas in which this committee will have to give some consideration to. We have some ideas on that. I am sure you will hear it from some of the other witnesses.

Senator PERCY. When it comes to the executive branch of government, obviously they are the biggest lobbyists of all, when it comes to Congress. The activities range from invitations to dinner at the White House for those who they can favorably influence to the so-called enemies' list. I think most of us were on it, so we could not be favorably influenced. The Department of Defense, I suppose, does an awfully good job of lobbying.

How do you take into account activities by DOD, when they furnish airplanes to Senators and Congressmen on request, when they take them on orientation trips to interesting places? Does either one of our bills somehow take into account the lobbying activities of the executive branch, direct and indirect, in an attempt to influence legislation? Is the initiative on the executive branch to report its lobbying activities?

I do not think it is fair to say the private sector has to report all this information but the executive branch does not.

Senator KENNEDY. Mr. Chairman, under the existing law, lobbying by the Federal Government is actually prohibited but it has never really been tested or challenged. We do not include the direct lobbying from the various Defense Department members and other activities.

I think all of us are aware of at least some of those abuses. We include in the exemptions from the definitions of lobbying the testimony, written statements before congressional committees, and communications through the President, communications by Federal, State, or local employees, communications by a candidate for Federal office, national, State, or local. We do not specifically include those kinds of activities.

We have felt there are those who believe they should. And that is perhaps the area of greatest need. Quite clearly, it ought to be an area that is carefully reviewed in terms of oversight function by the committees that are deciding appropriations by those various agencies. It has traditionally and historically been recognized as an important source of information for the Congress, beginning from the executive branch, in the development of legislation and carrying through the legislative function.

I think we have seen instances in the past where that purpose has not been so much educational as a direct kind of lobbying activities.

But it is a troublesome area. We do not specifically deal with it in the legislation. We welcome this committee if they want to take a crack at it. We have looked at it. I think it is extremely difficult to be able to develop the kind of provisions in here which would not, probably, dampen the opportunities for the clear lines of information and communication, and what has been historically and traditionally a strong working relationship in the development of public policy between the executive and Congress.

Senator PERCY. S. 774, that Senator Ribicoff and I have introduced, does have a logging requirement for executive branch officials to keep records on their contacts with outside groups.

Finally, do you feel there is any necessity for us to deal at this time with the lobbying done by foreign governments? I can well recall the tremendous popularity that a top official of the AID program felt that he had when he left industry and came to Washington. He and his wife were invited out every night, treated royally. Then he went over to the Space agency and suddenly realized that the embassy invitations stopped overnight, and he went to the movies after that.

Is there any need for us to deal with the problem of lobbying by foreign governments?

Senator KENNEDY. I would think they would be included. I think the classical area would be the sugar quota provisions, lobbying that has been done by foreign—seems to me they should. I think we do. If not, I feel those provisions should be included.

Senator STAFFORD. I would agree with Senator Kennedy. If a representative of a foreign government fell within any one of the three definitions of a lobbyist, I would think our bill would cover his activities, or her activities.

Senator PERCY. Finally, do you think we ought to look at whether or not there ought to be something done by Senators and Congressmen to adopt a logging procedure? At least so that they record contacts that are made with them?

Senator KENNEDY. I would think so, Senator.

Senator PERCY. Thank you very much.

Chairman RIBICOFF. Senator Brock.

Senator KENNEDY. I am supposed to Chair a health hearing, starting at 10. If there was a specific question, I would be glad to remain, but I would like to be excused at the earliest opportunity, since I have witnesses waiting.

Senator BROCK. Bob, if you could just respond to one or two.

Senator KENNEDY. Would that be all right, Senator?

Senator BROCK. It would be fine with me.

Chairman RIBICOFF. Thank you very much, Senator.

I think we ought to keep in mind, Senator Kennedy, before you leave, we cannot, ourselves, wrap government in such bureaucratic redtape that nothing ever happens and people cannot talk to us. One of the things that make us representatives of the people when we go home, wherever we are, people come up and talk with you and express their hopes, their aspirations, their fears and disappointments, without having to carry a stenographer around every time someone talks to you.

Senator PERCY. There is a difference in whether they are getting money for it or just expressing their views as citizens.

Senator BROCK. As Senator Stafford knows, I was one of the original cosponsors, and I do support the intent of this particular bill. But there are just a couple of questions I have that, even as a sponsor, bother me a little bit.

One relates to the comment by Senator Ribicoff and yourself. None of us intend to have this bill infringe upon any constitutional rights of free speech or free access to the representation that the American people deserve.

Senator STAFFORD. Certainly not, Senator, because it would be useless for us to urge you to propose legislation which might be struck down by the courts after we got it done.

Senator BROCK. One specific problem that I have is in the placement of enforcement with the Federal Election Commission. I wonder if you would comment on the possibility of replacing that with the General Accounting Office, which is also a creature of and is subservient to the Congress, but seems to have more well-developed skills in the audit and review process.

I am concerned not only because I think they are more competent, but I think their mandate is far more specific in this area than would be the Election Commission.

I am worried that the new law is going to take at least a year, maybe more, for the Election Commission to weigh its way through and come up with legislation. I wonder if they are going to have time to do an adequate job in this in addition to their prime responsibility.

Senator STAFFORD. Senator, I am aware of the fact that you have favored GAO, as the enforcement agency for legislation in this field. At one point in time this Senator also considered that body as one that could be given appropriately the task of enforcing and receiving the reports under this legislation.

In working with my colleague, Senator Kennedy, we, in amalgamating our different ideas into a single bill and single statement, I became convinced that the new Election Commission would be also an appropriate body to handle enforcement and reporting procedure. But I am not in cement on it and am prepared to take the guidance of this committee.

Senator BROCK. I just wondered if you had any particular compelling reason for not considering, at least, the General Accounting Office. I gather you do not.

Senator STAFFORD. No, I have not.

Senator BROCK. Second, I found a particular problem with some of the definitions in the bill. I think one of the problems we have with the existing law is that the words "principal purpose" are extremely vague and impossible of enforcement. You are replacing—we are—one vague term with one I consider almost equally vague. That is the words "substantial purpose".

I wonder if it would not be possible to be a little bit more specific in terms of our definition. I just do not know how you are going to enforce something like that, to be honest with you. I do not know what substantial purpose is.

Senator STAFFORD. Senator, my reply would be that, as a lawyer, the courts have fairly frequently, to my knowledge, defined both the words "principal purpose" and "substantial purpose". I believe that a court, in considering a specific matter, could find precedence defining "substantial purpose" and precedence defining "principal purpose", and that the words "substantial purpose" are more inclusive than "principal purpose" so that more people would come under the definition of lobbying in this respect.

Once again, speaking only for myself, I take no great pride of authorship in the language. If the committee can more precisely define the matters here, this Senator would accept it.

Senator BROCK. The reason I raise the question is that I remember some fairly heated debates we have had with regard to "substantial interest" relating to equity ownership. The question of interlocking directorates and so forth, where the Congress, under the banking committees, has been doing a lot of work in the last several years.

We have had "substantial interest" defined as anything from 50 percent to 20 percent down to 1 percent. It is almost a wide-open thing. By industry, by size of industry, by concentration, by a lot of other factors. I personally feel we ought to put a lot of effort into trying to spell out what we mean by "substantial purpose" rather than leaving it up to the courts. I think that is going to be difficult to justify.

I thank you for your testimony. As I said in my opening remarks, I appreciate the fact that the chairman has called the hearings. I appreciate the chance to consider legislation in an area which is inadequately covered by law today. But I also think it is important to point out that this is one of the most complex, difficult areas in which to legislate. I think the chairman knows it, as well as the Senator from Vermont. I appreciate the fact that we are going into this in some detail. I do not think you can rush through a bill without thinking of the various constitutional and other substantial questions that may be raised.

But I very much appreciate your leadership in the matter, and I think the Senator from Vermont is going to do a great service for his constituents in the country in this regard.

Senator STAFFORD. I thank the Senator for his kind words and appreciate the opportunity to be here on behalf of this legislation.

Chairman RIBICOFF. You have been the leader, Senator Stafford, and we all are indebted to you. As Senator Brock has indicated, we want to make sure that it works. We want to make sure that in no way do we foreclose the right of the public and the individual to make his point of view known, to petition his Congressman, Senators, or President, or anybody else. This becomes a very, very important factor to insure that we have a responsive government.

[The prepared joint statement of Senator Stafford and Senator Kennedy follows:]

Prepared Joint Statement of Senator Stafford
and Senator Kennedy

Mr. Chairman, it is a privilege for us to appear here together this morning and to testify at the opening of these important hearings on reform of the federal lobbying laws.

We are also pleased to have you, Mr. Chairman, as a principal sponsor of S. 815, the Open Government Act of 1975, which we introduced earlier this year with the strong support of Common Cause, and which is now before this Committee.

In addition, we are pleased to have as principal sponsors Senator Percy, the ranking minority member of the Committee, and Senator Brock, a distinguished member of the Committee.

We are especially pleased by your own commitment to this reform, Mr. Chairman, as demonstrated by these hearings and by your strong support for early action on this legislation in the current session of Congress.

In recent years, Congress has taken a number of far-reaching steps to improve the institutions of government and to make both Congress and the Executive Branch more open and responsive to the people. Among the most important milestones have been the Election Reform Acts of 1972 and 1974, the Budget Reform Act, and the Freedom of Information Act. This committee has been a pioneer of many of these reforms in the past, and its leadership is continuing today -- we think particularly of the major Consumer Protection legislation now awaiting action on the Senate floor.

Although much has been accomplished in the past, much more remains to be done. Now, the time is ripe to achieve another major goal in improving the responsiveness of Congress and the Executive Branch, by enacting comprehensive reform of the Federal lobbying laws. We believe that such reform is the most effective single step that Congress can now take to improve the functions of the Federal Government.

At the outset, we emphasize the valuable and indispensable role that lobbying plays in both the legislative and executive process. Lobbying, in and of itself, is a basic constitutional right, protected by the First Amendment. The flow of information to Congress and every Federal agency is a vital part of our democratic system. Without it, government could not function. Nothing that we propose would inhibit or diminish the key role that lobbyists must necessarily perform if government is to be genuinely responsive to the people.

But there is a darker side to lobbying, a side that is responsible for the sinister connotation that lobbying often has. In large part, the connotation derives from the secrecy of lobbying and the widespread suspicion, even when totally unjustified, that secrecy breeds undue influence and corruption. It is but a short step from there to the cynical and undeserved view that government itself is the puppet of wealthy citizens and powerful interest groups with special access to Congress and the Executive Branch.

Too often, the suspicions seem well-founded. Too often the needs of the people are overridden by interest groups clamoring for favored treatment. Too often, the public interest is subverted by massive assaults of special interests seeking special treatment by special contacts with special members of Congress and the Executive Branch.

The existing disclosure law, the Federal Lobbying Act of 1946, is an empty sieve. Written for another and quieter era of our national life, it is a generation out of date. It has now become a scandal and a national disgrace.

Day after day, lobbyists spend vast amounts of influence money in secret ways and for secret purposes. They stalk the halls of Congress and the Executive Branch with their bankrolls and identities undetected. The interests they represent are rich and powerful. Their operations can easily thwart the people's will and corrupt the public purpose.

Whatever impact the 1946 Act may have had when it was originally enacted, it is virtually insignificant today, and Congress cannot allow the problem to fester any longer.

To some extent, the balance is already being redressed today in favor of the ordinary citizen by the rise of public interest lobbies like John Gardner's Common Cause, Ralph Nader's Public Citizen, and Philip Stern's Center for Public Financing of Elections. These public interest groups have now developed to the point where on particular issues they are a genuine source of countervailing power against the entrenched special interest groups. But the use of public interest lobbies in no way reduces the need for effective lobbying reform.

The tax laws are a case in point. Fortunes are won or lost on the basis of a single arcane sentence in a lengthy complex bill or a Treasury regulation. Page after page of the Internal Revenue Code is dotted with the fingerprints of lobbyists -- special tax provisions written into the law for the benefit of a single company or individual. It is difficult enough under the present lobbying law to identify the beneficiaries of such favored tax treatment. It is virtually impossible to trace the way by which they suddenly surface in a committee bill or conference report.

Take the Tax Reduction Act of 1975, the major anti-recession law passed last month by Congress and signed by President Ford. Every member of Congress who voted on that measure knows in a general way that an enormous lobbying battle took place on the key provisions of that bill. But the details are almost totally unknown:

-- We do not know how much AT & T spent in the successful effort to delete the $100 million ceiling imposed by the House on the investment credit, but we know generally of the massive grass-roots campaign the company made to enlist shareholders and local telephone companies across the nation.

-- We do not know how much Chrysler, Lockheed and Pan Am spent in the unsuccessful effort to extend the tax carryback provisions for their corporate losses.

-- We do not know how much the independent oil producers spent to secure their exemption from repeal of the oil depletion allowance. We do not know the way the tax credit for home purchasers first appeared in the bill and was then gradually pared back. We do not know how the multinational corporations softened the impact of the reforms in the Senate bill on the taxation of income earned abroad.

All we really know is that the interests of these and other special interests were extremely well represented at every critical stage in the enactment of the legislation.

Our knowledge is equally vague on virtually every other bill in Congress. Yet it is fair to say that not a single measure clears the Senate or the House, from the most minor to the most important, without the involvement of a lobbyist.

The more powerful the special interest groups, the more important it is for their operations to be disclosed and understood. Business, labor, agriculture and many other interests have powerful lobbyists who serve their causes well. All we ask is that their activities and their finances be open to public view.

The reforms we propose today are designed to dispel the secrecy and suspicion surrounding lobbying, by opening up the practices of lobbyists to full public view. The reforms we offer are based on the straight-forward rationale that sunlight is the best disinfectant, that disclosure is the most suitable "control" over lobbying, and that lobbying laws should identify pressures, not restrict them.

Our guiding principle is that the public's business should be carried out in public. Only in that way can we end the undue sway and influence of lobbyists over Congress and the Executive Branch.

As an attachment to our testimony, we have included a detailed summary of the bill and a number of examples of its application to specific cases. In essence, the provisions of S. 815 would improve the current lobbying law in three principal respects, each of which would close a major loophole in the existing law.

First, the coverage of lobbying activities would be extended for the first time to the Executive Branch. The existing law is applicable only to Congress.

Second, coverage would be expanded to include all individuals or organizations which engage in lobbying to any significant extent. Under the bill we propose, a lobbyist would be covered by the bill if he meets any one of three alternative tests, based on income received for lobbying, expenditures made for lobbying, or communications made with members of Congress or the Executive Branch.

Present law applies only to lobbyists whose "principal" activity is lobbying; it applies only to lobbyists who spend funds received from others, not those who spend their own funds for lobbying; and it applies only to those who make direct communications with Congress, not the so-called "grass-roots" lobbyists who seek to influence Congress indirectly, through mass mailings to the public or other means.

Third, enforcement of the lobbying laws would be entrusted to the Federal Election Commission. Strong new powers over lobbying would be provided, analogous to the Commission's existing powers to enforce the Federal election laws. Under present law, there are only weak enforcement powers, and they are entrusted to the Secretary of the Senate and the Clerk of the House.

In each of these respects, the reforms we propose will bring significant changes to the lobbying laws. Whatever justification there may have been in 1946 for the failure of the present law to cover lobbying directed at the Executive Branch, the justification is no longer valid today. In this modern era, in which actions of the Executive Branch have pervasive effects on virtually every area of national life, it is essential that both Congress and the country be aware of the pressures that are being used to influence executive decisions. Yet, today, there is essentially no law at all applicable to executive lobbying.

The situation is hardly better with respect to Congressional lobbying. The provisions of the 1946 Act that apply to Congress are little better than no law at all. In large part, we have a crisis over lobbying today because for many years, Congress has abdicated its responsibility to keep our basic "Truth in Government" lobbying law current with modern needs.

In part, the Federal Regulation of Lobbying Act of 1946 was flawed at the outset, because it was a timid approach to a major and growing problem. In part, however, its current ineffectiveness is also the result of a Supreme Court decision in 1954 that narrowly construed the ambiguous provisions of the 1946 Act. For twenty years, Congress has blandly accepted the Court's decision, content to leave this toothless law in force, rather than give it the teeth it ought to have.

The Supreme Court case in question is United States v. Harriss, in which the Court opened up three gaping holes in the 1946 Act.

-- First, the Court held that the Act is applicable only to individuals or organizations whose "principal" purpose is to influence legislation. As a result, many out-and-out lobbyists have successfully avoided compliance with the Act, on the ground that their lobbying activities, while substantial, are not their "principal" purpose within the narrow meaning of the Act. In recent years, there have been some notable abuses in this area, involving organizations and groups which have mounted enormous lobbying activities in opposition to major legislation in Congress, but which have refused to comply with the provisions of the Lobbying Act, because they claimed lobbying was not one of their "principal" activities.

-- Second, the Court held the 1946 Act is applicable only to a person who "solicits, collects, or receives" money or any other thing of value for lobbying activities. In intepreting this lanugage in the Harriss case, the Supreme Court held that persons who merely expend their own funds are not covered by the Act. They are lobbyists only if they receive funds from others and spend them for lobbying.

However, the Court's opinion by Chief Justice Earl Warren contained an explicit invitation to Congress to close the loophole in this area. As the Court stated, if a broader construction of the Act is to become law, it "is for Congress to accomplish by further legislation."

The invitation is more timely than ever now, because, as Mr. Justice Jackson stated in his dissent in the Harriss case:

> More serious evils affecting the public interest are to be found in the ways lobbyists spend their money than in the ways they obtain it.

-- In yet a third way, the Harriss decision significantly weakened the 1946 Act. It construed the Act as applicable only to lobbying that involves so-called "button-holing" of members of Congress -- direct communications with members on pending or proposed legislation. As a result, many individuals and organizations -- the grass-roots lobbyists -- who seek to influence legislation indirectly, through mass letter campaigns or other methods are not subject to the present law.

These and other serious loopholes in present law should have been remedied long ago. To be effective, a lobbying law must cover all significant lobbying. It must cover lobbying of the Executive Branch. It must cover lobbyists who expend their own funds. And it must cover grass-roots lobbyists who stimulate lobbying activities by others.

The heart of our bill is the three-prong definition of lobbying, based on income, expenditures and communications. We believe that each prong is an essential aspect of lobbying reform. Obviously, no logically compelling dividing line based on income or expenditures or communications can be set by Congress that is capable of distinguishing

significant from insignificant lobbying. But we believe that the tests we have chosen reflect a realistic and workable definition of the sort of substantial lobbying activities that should be covered if a Federal lobbying law is to be worthy of the name.

The three prongs of the test operate as follows:

-- First, a person is a "covered lobbyist" if he receives income of at least $250 a quarter for his employment, and if his work includes "substantial" lobbying, even though the income is not received specifically for lobbying. This prong will cover the typical Washington representative who performs various duties for his clients, including substantial lobbying, but who does not meet the expenditure test below, because his activities do not necessarily include specific expenditures for lobbying.

-- Second, a person is a "covered lobbyist" if he makes expenditures of at least $250 a quarter for lobbying. This prong will cover all persons who spend substantial sums for lobbying.

-- Third, a person is a "covered lobbyist" if he makes at least eight oral communications a quarter with employees of Congress or the Executive Branch. This prong will cover corporate presidents and other influential persons for whom lobbying may be only a small part of their work, but whose well-placed telephone calls and Congressional or agency visits may be a key factor affecting the outcome of legislation or executive action.

In addition, the bill requires each covered lobbyist to keep personal records and logs of income and expenditures for lobbying, including itemized accounts of expenditures of more than $10. The $10 cut-off level is not unduly burdensome. The Federal election laws are an obvious precedent here. They require detailed accounts to be kept of all campaign contributions in excess of $10, and of all campaign expenditures, whatever the amount. It is difficult to maintain, therefore, that the $10 cut-off level for lobbyists is too burdensome, when members of Congress have already accepted comparable requirements for their own election campaigns.

The bill also requires lobbyists to report all expenditures of $25 or more, or $100 in a year, for gifts, lunches, private plane trips, or other benefits to employees of Congress or the Executive Branch, even though the expenditures are unrelated to any specific lobbying activity or purpose. Although such expenditures may be separate from overt lobbying, they still should be disclosed, because they give the obvious appearance of influence peddling.

As a safeguard against undue hardship in the application of these tests, the bill authorizes the Commission to modify the reporting and disclosure requirements in extenuating circumstances where a requirement is unnecessarily burdensome. The Commission already has comparable authority to allow such exemptions from the strict requirements of the Federal election laws.

Of special importance in the proposed bill, apart from the major substantive reforms, are the provisions transferring the responsibility for policing the Lobbying Act from the Secretary of the Senate and the Clerk of the House to the new Federal Election Commission.

One of the major defects of the 1946 Act is its failure to establish clear cut responsibilities for administration, enforcement and analysis of lobbying activities. As a result, much of the information available under the present Act is unusable, and its provisions are largely unenforceable.

Under the bill, the Commission will be given broad enforcement authority over lobbying, comparable to its authority to enforce the election laws. Thus, the Commission will have power to require full disclosure of lobbying activities, to compile and tabulate lobbying reports, to ensure compliance with the Act, and to refer violations of the Act to the Department of Justice.

Mr. Chairman, questions are beginning to be raised in some quarters by lobbyists concerned about this reform legislation, especially those with a vested interest in the secrecy of their operations. We are confident that the committee will weigh these issues fairly in whatever action it may take.

But as we have indicated, we do not believe the definitions in our bill impose unduly burdensome requirements on lobbyists or inhibit any citizen's First Amendment right to petition the Government. If we are serious about reporting and disclosure of lobbying activities, we must set levels of coverage commensurate with the significant lobbying activities with which all of us are familiar. We believe the definitions we have chosen strike a reasonable balance between excessive burdens on lobbyists and the people's right to know the way their government functions. The net we spread will cover the vast majority of lobbyists whose activities are concerted or substantial or capable of wielding special influence, while exempting the countless other contacts between citizens and government that do not meet these tests and that no lobbying law should fairly cover.

Overall, the various reforms in the bill we are proposing will produce major improvements over existing law. Our proposals to expand the coverage of lobbying activities will eliminate some of the most serious defects of the current Act. These reforms will bring within the terms of the Act a significant number of individuals and organizations currently engaged in extensive lobbying activites, and will provide important new information on the scope and intensity of efforts to influence both legislative and executive actions.

Last year, Congress overwhelmingly approved major new election reform legislation, requiring comprehensive reporting and disclosure of political contributions and expenditures. The time is long overdue for us to apply the same full disclosure principle to lobbying activities.

That rationale applies equally to all persons engaged, directly or indirectly, in substantial lobbying activities, whatever the source of their funds. It in no way interferes with the fundamental right of the people, guaranteed by the First Amendment, "to petition the Government for a redress of grievances."

The purpose of a lobbying law was eloquently summarized by Chief Justice Warren in the Harriss case:

> Present day legislative complexities are such that individual Members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends in no small extent on their ability to properly evaluate such pressures. Otherwise, the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent.
>
> Toward that end, Congress has not sought to prohibit these pressures. It has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose.

Nearly thirty years have passed since Congress acted to require information about lobbying pressures. More than twenty years

have passed since the Supreme Court invited Congress to make that action more effective. In the intervening years, there has been a revolution in the role of Congress and in the way lobbyists operate. It is time to meet the modern challenge of reform. Congress and the American people are entitled to know the ways our laws are made and carried out.

We are especially encouraged by the bipartisan support we have found in launching this reform in the Senate. In recent Congresses, the two of us have introduced separate lobbying reform measures. We believe that the bill we are submitting today represents a synthesis of the best provisions and approaches in each of our earlier bills.

This issue can be the next major area of effective action by the Senate in our continuing effort to restore the confidence of the people in the integrity of their government and to improve the responsiveness of Congress and the Executive Branch. We look forward to early favorable action by the Committee under your leadership, Mr. Chairman.

SUMMARY -- OPEN GOVERNMENT ACT OF 1975

PURPOSE: 1. The primary purpose of the Act is to improve the operations of Congress and the Executive Branch by full disclosure of lobbying activities by those attempting to influence legislative or executive action.

2. The Act would not prohibit any type of lobbying, but would require full disclosure, including disclosure of specific lobbying activities, reporting of income and expenditures for lobbying, and identification of persons seeking to influence Congress or Federal agencies.

3. The Act would replace the existing Federal Regulation of Lobbying Act of 1946, whose loopholes and lack of enforcement have made it ineffective as a lobbying disclosure law. The existing law does not apply to lobbying of the Executive Branch. In addition, there are serious gaps in the law's application to lobbying of Congress: (1) by covering only persons whose "principal" activity is lobbying, the law fails to cover many who engage in substantial lobbying activities; (2) the law fails to cover those who spend their own funds for lobbying; (3) it fails to cover so-called "grass roots" lobbyists, i.e., those who solicit others to engage in lobbying by mass mail campaigns or other methods; and (4) its enforcement provisions are weak and are entrusted to the Secretary of the Senate and the Clerk of the House. The proposed reforms would remedy each of these defects.

DEFINITION OF LOBBYING - The Act defines lobbying as any communication with a member of Congress or the Executive Branch in order to influence any official action.

COVERED LOBBYISTS -- The Act establishes three alternative tests to define lobbyists covered by the reporting and disclosure requirements:

1. Income Test -- A lobbyist is covered if lobbying is a substantial purpose of his employment and he receives income of $250 or more per quarter or $500 or more per year for his employment. The income need not be attributable to lobbying activities; he is covered if he receives the income and engages in lobbying.

2. Expenditure Test -- A lobbyist is covered if he makes an expenditure for lobbying of $250 or more per calendar quarter, or $500 or more per year. In computing the amounts, the Act excludes the lobbyist's personal expenses for travel and lodging.

3. Communication Test -- A lobbyist is covered if, in the course of lobbying, he makes communications with one or more employees of Congress or the Executive Branch on at least eight separate occasions. The communications must be oral; a person is not a covered lobbyist under this test if his communications are written.

EXEMPTIONS FROM DEFINITION OF LOBBYING -- The Act excludes the following activities from the definition of lobbying:

-- Testimony or written statements before a Congressional committee or a Federal agency, if the testimony or statement is a matter of public record.

-- Communications through the press.

-- Communications by Federal, State or local employees acting in their official capacity.

-- Communications by a candidate for Federal office or by national, state, or local political parties.

METHOD OF DISCLOSURE -- To carry out its disclosure purpose, the Act adopts a three-part system of Notices of Representation, Records and Reports:

1. Notices of Representation -- Fifteen days after becoming a lobbyist, a person must file a Notice of Represenatation identifying the lobbyist, his employers, his employees, the financial terms of his employment, and the purpose of his lobbying activities, including the specific actions he will seek to influence and the persons he expects to contact in Congress or the Executive Branch.

2. Records -- Each lobbyist must maintain personal records of income and expenditures for lobbying, including itemized accounts of expenses of $10 or more.

3. Reports -- Each lobbyist must file quarterly reports covering his lobbying activities during the quarter, identifying each lobbying activity and each person contacted in Congress or the Executive Branch. The reports must also include copies of relevant records kept by the lobbyist, and details of mass mailing campaigns and other efforts to solicit others to lobby.

VOLUNTARY MEMBERSHIP ORGANIZATIONS -- The Act modifies some of the detailed disclosure requirements for such organizations. The Notice of Representation must list only the approximate number of members and a general description of the mechanics by which the organization decides to engage in lobbying. The Reports must identify only those members who contribute more than $100 a year to the organization.

GIFTS TO FEDERAL EMPLOYEES -- The Act requires a lobbyist to include in his reports any expenditures made to or for any officer of Congress or the Executive Branch, if the expenditure exceeds $25.00 or if the total expenditures for such purposes exceed $100 a year. The provision applies to gifts, lunches, private plane trips, or other benefits provided directly or indirectly to Federal employees.

ENFORCEMENT -- The Act places the enforcement of the lobbying disclosure provisions in the new Federal Election Commission. The Commission is given broad enforcement powers, analogous to those available for enforcement of the Federal election laws, including hearings, subpoenas, and investigative and civil injunction powers. The Commission is also given the authority to modify the reporting and disclosure provisions in particular cases where the requirements of the Act are unduly burdensome. The Commission is also directed to publish the lobbying reports filed with it and to compile and summarize the information in the reports, including a compilation of information on lobbying by those sharing a common economic or other interest in legislative or executive actions.

PENALTIES -- The Act contains a $1,000 fine for failure to comply with the notice, record, or reporting requirements. Willful violations of the Act are subject to a fine of $10,000 and imprisonment for two years.

SOME APPLICATIONS OF S. 815, THE STAFFORD-KENNEDY LOBBY REFORM ACT

1. An officer of an organization makes a single call to a Senator before a vote on a crucial issue. The officer is not required to register as a lobbyist himself since he meets none of the three tests (income, expenditure,communications). But the organization itself would presumably meet the expenditure or communication test because of its related lobbying activities, and the officer's phone call would have to be included in the organization's lobbying report. Thus, the lobbying is reported, but the officer is not burdened himself with the requirements of compliance.

2. The officer of an organization calls the ten members of his State's Congressional delegation before a crucial vote on a bill. The officer must register as a lobbyist himself, because he meets the "eight communications per calendar quarter" test.

3. The officer writes letters to the ten members of his State's Congressional delegation before a crucial vote on a bill. The officer is not required to register as a lobbyist, since the communications in the "eight communication" test must be oral, not written.

4. The officer meets with the ten members of his State's Congressional delegation. The officer is not required to register as a lobbyist; the communications in the "eight communications" test must take place on separate occasions.

5. Five hundred members of a national organization come to Washington for a day-long conference. The members visit Capitol Hill to urge support of a pending bill. Some members see staff representatives of eight Senators; others see a smaller number. Those who make eight or more contacts would technically be required to register. But the organization could obtain an exemption for its members from the Federal Election Commission, and would be required only to include these lobbying activities in the organization's own report.

6. An organization hires Mr. A as its Washington representative for a $10,000 a year retainer. Approximately one-tenth of Mr. A's job for the organization involves lobbying; the remainder involves private activities of the organization, unrelated to lobbying. Mr. A must register as a lobbyist, because he meets the "income" test (he is paid more than $250 a quarter for his employment and a "substantial" part of his job involves lobbying). Presumably, Mr. A would also meet the "communication" test by making eight or more lobbying communications per quarter.

7. Gifts

a. Lobbyist A delivers a $30 holiday turkey to Senator X. The gift must be included in the lobbyist's quarterly reports.

b. Lobbyist B delivers a $20 tie clip to each of four Congressmen. The gifts need not be reported. If he delivers six clips, he meets the $100 test and the gifts must be reported.

c. Lobbyist organization C allows Senator A to ride in its private airplane to his home state. If the equivalent commercial value of the trip is more than $25, the trip must be reported.

d. Lobbyist D gives $200 to Congressman Y's re-election campaign. the contribution must be reported in Mr. D's lobbying reports, in addition to whatever reporting requirements are applicable under the Federal election laws.

Chairman RIBICOFF. Gardner, we welcome you again. You are always welcome as an individual, as well as the head of a public interest group, Common Cause. I know the leadership your organization has taken and we welcome your testimony, sir.

TESTIMONY OF JOHN GARDNER, CHAIRMAN, COMMON CAUSE, ACCOMPANIED BY R. MICHAEL COLE AND RICHARD CLARK

Mr. GARDNER. Mr. Chairman, I have with me Richard Clark on my right, Michael Cole on my left, who have worked very hard on this subject for us. They will be able to answer questions, as well as myself.

Mr. Chairman, I am honored to have the opportunity to appear before this committee. Common Cause supports the new lobby disclosure legislation S. 815 and S. 774 under consideration today, and we commend the leadership exhibited by you and other cosponsors on this issue. Lobbying has become one of the most secretive and potential corrupting ingredients in American politics. The time for legislation to bring it out in the open is long overdue.

As a citizen I am deeply grateful to you, Mr. Chairman, Senator Percy, Senator Stafford, and Senator Kennedy who testified, Senator Brock, and Senator Clark for really impressive leadership in putting this subject before the Congress.

Mr. Chairman, I shall omit portions of this statement for brevity.

Chairman RIBICOFF. Without objection, the entire statement will go in the record at the end of your testimony.

Mr. GARDNER. Mr. Chairman, citizens should be able to know the identity and activities of special interests that are seeking to influence national policy through lobbying. But such information is not available to citizens today. Most lobbying activities go on behind a veil of secrecy, despite a 1946 law that is supposed to require disclosure of lobbying receipts and expenses. The Federal regulation of Lobbying Act of 1946 is ambiguous, riddled with loopholes and impossible to enforce. Many of the most powerful lobbyists mock the law through noncompliance with its reporting requirements. For example:

Last year the American Trial Lawyers Association set up an elaborate and devious lobbying system to oppose no-fault insurance. It secretly arranged for mailgrams opposing the legislation to be automatically sent to key Congressmen by Western Union offices around the country. Association members needed only to call Western Union and give the names of friends and associates, and for each name given, 10 messages were sent off to Capitol Hill. The association even arranged for Western Union's sales force to encourage local trial lawyer associations and other interested groups to use the mailgram service. The result was a deluge of messages to key congressional offices protesting no-fault insurance, all seemingly sent individually by concerned constituents. In one case, 31 sets of 100 telegrams were all sent by the same individual.

The American Trial Lawyers Association was not registered as a lobbying organization.

In 1971 when ITT was trying to get the Department of Justice to drop its antitrust suit against ITT, executives made visits to

Cabinet officials and White House staff members. These contacts, unknown to the public at the time, only became public as the result of later congressional hearings. It appears, moreover, that high-level personal contact is ITT's favorite lobbying tactic. In job descriptions submitted during the nomination hearings for former Attorney General Richard Kleindienst, six ITT officers noted that contacts with key Congressmen and various agency officials are an important part of their job. As one executive wrote:

> There are several executive departments which are important to ITT, and therefore contacts have to be maintained . . . I spend at least two nights a week with government personnel. These evenings include socializing, arranging and attending parties, attending sports events and other functions. Weekends are usually spent with Hill personnel . . .

Neither ITT, nor any of these officers, are registered lobbyists.

The American Electric Power Co., one of the Nation's largest utility holding companies, recently conducted a massive advertising campaign to promote increased development of coal reserves. Most of these reserves are either owned or leased by AEP, which owns seven midwestern electric companies and six mining companies. The campaign consisted of 36 advertisements in 260 national and local publications, and cost AEP approximately $3.6 million. While most of the ads simply aimed to convince the public that coal is the country's answer to the energy crisis, some of them specifically called for various legislative changes.

The AEP is not registered under the present lobby law.

American drug companies have been lobbying HEW to reject a plan that would save taxpayers $90 million annually. The plan would restrict prescriptions under medicare and medicaid to the lowest priced drugs having the required therapeutic characteristics. As part of the campaign to block this plan, the firms have solicited letters from pharmacists and doctors opposing the plan. Ayerst Laboratories, for example, ordered 200 of its salesmen to obtain letters of opposition from five druggists each. According to one salesman, these letters were then to be presented by the company's president to HEW Secretary Weinberger "as evidence of the opinion of the Nation's pharmacists."

Neither Ayerst Laboratories, the company's president, nor anyone else representing the firm are registered as lobbyists.

Now, I have listed in my prepared statement, Mr. Chairman, some of the ingredients of reform which certainly must be contained in any bill that you write. I will not go over them. You are very familiar with them.

First is coverage of the executive branch; second is logging executive branch personnel of outside lobbying contacts; third is a broader definition of lobbying.

A broader definition would provide, for example, that individuals who lobby indirectly by employing or soliciting others to do it, would have to register. For example, when the chairman of General Motors writes to every stockholder in the corporation, as he did last February, urging them to write their Congressman for a 5-year delay in auto emissions standards, that is lobbying. Neither Chairman Murphy or General Motors itself are now registered as lobbyists.

Chairman RIBICOFF. In other words, do I understand, Mr. Murphy has a right to do this?

Mr. GARDNER. Absolutely.

Chairman RIBICOFF. But the public should know and Congress should know that this is how the letters are coming.

Mr. GARDNER. Yes, sir.

The fourth ingredient is comprehensive reporting requirements, and the fifth, strong enforcement provisions.

Now I would like to say a word about arguments against lobby disclosure.

Opponents of this legislation have argued that the reporting requirements are overly burdensome.

Our experience totally refutes the argument. Common Cause has had little difficulty in filing detailed lobbying reports on the Federal level or in the 28 States where our lobbyists have complied with State statutes.

Chairman RIBICOFF. Would you please let the committee have the list of the 28 States?

Mr. GARDNER. Yes, sir, we will supply that for the record.

[The information follows:]

STATES IN WHICH COMMON CAUSE MADE LOBBYIST FILINGS

Alabama	Iowa	Ohio
Arizona	Maryland	Oklahoma
Arkansas	Massachusetts	Oregon
California	Michigan	Pennsylvania
Colorado	Minnesota	Rhode Island
Connecticut	Mississippi	Tennessee
Delaware	Missouri	Texas
Florida	Nebraska	Vermont
Georgia	New Hampshire	Virginia
Hawaii	New Jersey	Washington
Idaho	New Mexico	West Virginia
Illinois	New York	Wisconsin
Indiana	North Carolina	District of Columbia

Mr. GARDNER. Our Federal reports give total expenditures on advertising, wages, printing, and mailing, office overhead, telephone, and other items. They include numerous pages of itemized expenditures of over $10, including the date, amount, recipient, and purpose of each expenditure. A copy of Common Cause's lobby report for the fourth quarter of 1974 is attached. (Appendix B).[1]

The financial records required in S. 815 and S. 774 are already kept, in large measure, by many lobbying organizations as part of general accounting practices. The disclosure of this information is a small additional burden. Moreover, the burden of reporting lobbying activities and expenses increases with the amount of lobbying done. The small-scale or occasional lobbyist would not find it much of a problem. The burden would fall where it should—on those who seek to influence Government through expensive or substantial lobbying activities.

Opponents of the legislation have also argued that broad disclosure requirements will deter outside parties from communicating with Government officials. But this is simply not true. Legitimate forms of interaction, as has been said many times this morning already, between public officials and outside interests will continue

[1] See Appendix B on p. 69.

unabated, but out in the open. Communications from individual citizens, acting in their own behalf and with minor expenses, are not covered by the legislation. There would be no chilling effect on this kind of citizen participation in Government affairs. The only chilling effect would be on those engaged in organized lobbying which they do not wish to have publicly known.

Still another argument advanced in opposition to this legislation is the assertion that it is unconstitutional because the reporting requirements unjustifiably restrict the right to petition government for a redress of grievances. But the legislation would not restrict, restrain, or prohibit any lobbying activity—it only requires disclosure.

Chairman RIBICOFF. I think what you have to be careful of, those of us in public life, we go home and go to meetings of various groups. We usually, I imagine, Senator Percy and Senator Brock, let it be known that if anybody in the audience has problems, feel free to discuss them with us. It is part of our duties as a U.S. Senator.

I find in my own State that people take advantage of that. People have problems with the Federal Government and they come up and chat with you and talk with you. We want to make sure people are not foreclosed from talking with their Senators and Congressmen, even the President of the United States.

Mr. GARDNER. Regulations will have to be written on this legislation and they will have to face some difficult questions of making the legislation workable. But we are convinced that that can be done, and done with good and reasonable consequences.

The Supreme Court has held that the benefits justify lobby disclosure laws. A memorandum on the constitutionality of lobby disclosure requirements is attached. (Appendix C).[1]

I will just make one comment on our experience on lobby reporting under the present law. Common Cause, from the beginning, scrupulously reported all lobbying expenditures. As a result, in the final quarter of 1970, when our organization was only 4 months old, we appeared to be by far the largest lobbying operation in the country—twice as big as the nearest competition. In the second quarter of 1971, when we were 10 months old, we appeared to be five times as large as any other lobby. Among those either not registering or reporting no expenditures in the latter quarter, were General Motors, the American Bankers Association, ITT, and the National Rifle Association.

Mr. Chairman, the momentum for a new lobby disclosure law has been steadily growing. The Railsback-Kastenmeier bill in the House, which is identical to S. 774, now has 130 cosponsors. The results of a Common Cause survey conducted last year show that 318 House Members favor comprehensive disclosure of lobbying activities, and 263 Members believe that a new lobby law should also require executive branch policymakers to log outside contacts and communications.

I understand those statistics have been slightly revised and we will submit the revised statistics for the record.

[1] See Appendix C, p. 101.

Of the 58 Senators who responded to our questionnaire, 48 voiced support for new lobby disclosure legislation, and 45 supported the logging provision. The results of this survey on these issues are attached. (Appendix D).[1] The House Republican task force has called for a stronger lobby law with logging requirements. At the June 1974 National Governors Conference, the Governors endorsed lobby disclosure legislation. Eighteen State legislatures have tightened existing lobby disclosure laws or enacted strong new statutes over the last 3 years. A chart summarizing State lobby laws, which you have already asked for, Mr. Chairman, is attached. (Appendix E).[2] Many of these laws are far more comprehensive than the Federal statute.

It is clearly time for Congress to act on this issue. It has sat on lobby reform legislation over the last 3 years. But it can do so no longer. Strong legislative measures have now been introduced in both Houses, and they have broad support. Enactment of a new lobby law should be a top priority for Congress this year.

Thank you very much.

Chairman RIBICOFF. Thank you very much, Mr. Gardner.

Without objection your entire statement and exhibits and appendices will go in the record as if read.[3]

Mr. Gardner, do you have any estimate of how many people would be considered lobbyists under the definition of these two acts?

Mr. GARDNER. No, sir, I do not. Maybe my colleagues do. It has been a very difficult kind of figure to produce. There are a number of estimates in the literature.

Mr. CLARK. We do not have estimates on the number that would be covered under the act. I think that is partly due to the problem we are addressing ourselves to. We do not know how many lobbyists there are. There are estimates this past year that come close to 2,000, or in that vicinity, who are actually registered under the 1946 act. It is also indicated in a number of news reports and elsewhere that there are 5,000 to 7,000, possibly as high as 10,000 lobbyists. There may be many more. We just do not know. Nobody, to my knowledge, has that information.

Chairman RIBICOFF. Do you have any idea if these bills were law how much money would have been reported as expended for lobbying activities? Do you have any idea what that would amount to?

Mr. GARDNER. It probably is the same, Mr. Chairman. The literature is full of estimates, but so far as we can tell none of them would really bear serious scrutiny. They are guesses. We just do not know.

Mr. CLARK. We can say that the $1.2 million which Common Cause has indicated is its lobbying expense, which sets out far and above any other lobbying group in town, that front runner position would certainly be changed by a stricter law. We are aware there are organizations who spend far more than we do for lobby expenses, but due to the inadequacy of the 1946 act, the fact that they determine what percentage of their expenses are attributable to lobbying, we do not have reliable figures.

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[1] See Appendix D, p. 121.
[2] See Appendix E, p. 141.
[3] See Mr. Gardner's statement on p. 44, and exhibits and appendices beginning on p. 56.

Chairman RIBICOFF. Let me ask you, you probably are the leading organization in supplying full information as to your finances and activities. Do you feel that this full disclosure has in any way hampered your effectiveness as a lobbyist?

Mr. GARDNER. No, we think it has done us literally no harm at all, either in time expended or in the public consequences. My view is that any group that is about legitimate business would feel the same about it once they started reporting it. Of course, it is somewhat of a burden, but we have not found it an extraordinary burden, and we report in 28 States, as I said.

Chairman RIBICOFF. Do you think it has helped you to fully disclose?

Mr. GARDNER. Well, that is a hard question to answer. It is just the very essence of what we are doing, that we want everything out in the open. We have found that the light of day is just the greatest thing in the world for the kind of things we are dealing with.

Chairman RIBICOFF. Do you have any estimate how much it costs you to collect and file the information that you publicly do?

Mr. GARDNER. No, sir. We can make an estimate of that for you, if you would like.

Chairman RIBICOFF. I think we ought to have it. It will indicate is it burdensome? Is it onerous or not? How much do you get in and how much do you spend? But what your cost is to collect and file the information you do in the 28 States and also to your members and to the Federal Government.

Senator BROCK. Would you also include the current cost in which you're complying with more than is required, but judge, if you will, any incremental costs that might be incurred as a result of this change.

Mr. GARDNER. Right.

(The information follows:)

COMMON CAUSE,
Washington, D.C., January 14, 1976.

To: John Gardner
From: Bob Meier

During 1975 Common Cause filed lobbyist registration and report forms (or registration forms only where there were no paid lobbyists) in 38 states and the District of Columbia. In several of these states, reports were not required, but were made on a voluntary basis.

There is virtually no information required in our lobbying reports which is not produced routinely by our accounting system as a normal part of sound accounting practice and financial accountability. Filing costs represent a miniscule part of our budget despite the high degree of lobbying activity engaged in by Common Cause.

The cost of preparing our Federal lobby reports, for example, is virtually limited to the person hours spent in abstracting information readily available from our accounting system.[1] The cost of Common Cause filings is estimated at $225 per quarterly report ($900 per year).

State lobbying report information is also readily available from our central accounting system. State requirements vary and preparation time normally ranges from 1 to 4 hours per report with an approximate cost of $6 to $24 in staff time. A few state reports (notably California) have required from one to three days of a staff member's time.

The number of state lobby reports Common Cause files varies with the amount of state legislative activity and the schedule of state legislative sessions. Of the 39 state level reports filed in 1975,[2] the cost is estimated to be between $1,500 and

[1] There are a few minor xeroxing costs involved in filing which are not significant enough to cost out.

[2] A list of the 39 states (including the District of Columbia) in which reports were filed is shown on p. 30.

$2,000. It should be noted that the estimated range represents liberal cost estimates.

Chairman RIBICOFF. Now, disclosure of a lobbyist's activities often comes only after a vote has been taken or a decision reached on an issue. Yet this decision and this information might be very useful to Congress or the executive branch. Do you have any suggestions as to how to make information as to lobbying activities available before an issue is decided, instead of after an issue is decided?

Mr. GARDNER. My own judgment is that you cannot really do that. I think when all of us who lobby report fully, the press will become quite aware of who is deeply involved in lobbying and will pay closer attention. I do not think of an official way in which we could do that.

Mr. CLARK. There are several ways in which the legislation addresses this problem. One is through the notice of representation in which lobbyists would have to indicate its posture with respect to specific bills. That would at least give us an indication of what issues they would be working on and what their position is on them. In addition to that, the logging provision is one of the most viable ways, we think, of approaching that because the logs would have to be made available in a central file within 5 days after contact was made. I think that is probably as close as you will get to "before the fact" information as a practical matter.

Chairman RIBICOFF. I thought I had in mind, you made note of the American Trial Lawyers Association, with what they achieved and what they did. How do you get to the Congress that this is not a grassroots movement, but something that has been carefully engineered and orchestrated?

Mr. CLARK. The solution to this problem is largely a function of the enforcement mechanism that is established, and why we are so strong in terms of including that as a major provision. Presumably the Federal Elections Commission or other enforcement body would have the ability to inspect information or records that came in, or information that was sent to Congress, and conduct an on-the-spot investigation if that were necessary.

Chairman RIBICOFF. Section 6 of S. 815 requires a lobbyist to report each contact he makes and the subject matter of the contact, what Congressman or agency official. What useful purpose do you believe this serves?

Mr. GARDNER. First, let me say that that is one section of the bill which would obviously have to be the subject of defining regulations when the regulations are written. Clearly they would have to be explicit about what is the nature of a reportable contact.

Chairman RIBICOFF. You see, you make a speech before Connecticut Manufacturers Association or Connecticut AFL–CIO convention. During the course of the speech or dinner all kinds of people are coming up to you just to chat with you. Would it be a requirement that any manufacturer or labor leader who has an interest in legislation would make the report that I attended a meeting in Tennessee and Senator Brock was a speaker or Senator Ribicoff was a speaker, and I talked with him? I mean I am just trying to figure out how do we make sure this is effective and not foolish?

Mr. GARDNER. May I ask Mike Cole to comment?

Mr. COLE. One solution we have considered in this area is to write in a requirement that mass meetings or gatherings of over x number

of people could be precluded from the reporting requirements. So, for example, if you are addressing a group of over 50 people, those contacts would not be included within the law's coverage—the people attending the gathering would not be considered to have "contacted" you. That's one possibility.

Chairman RIBICOFF. You see, this is relative. I could go to the chamber of commerce meeting in Lakeville. There may only be 10 people. I go to a chamber of commerce meeting in Hartford, and there could be 1,000 people. Yet, the small chamber of commerce group of a small town of 10 has as much right to have my presence and thoughts as a meeting of 1,000 people. I am just trying to figure what your thinking is.

Mr. COLE. We are not questioning your right to go or their right to invite you—we do not seek to regulate that in any way. All we are trying to do is establish reasonable criteria as to which contacts would need to be reported.

Chairman RIBICOFF. That is what I mean. Does Mr. Jones, who runs the Lakeville Hardware Store, and is interested in the fair trade bill, let us say, does he have to say on such and such a day I talked to Senator Ribicoff?

Mr. COLE. As Senator Kennedy has indicated, if the various criteria set out in the bill would be met, then the conversation would have to be listed. If Mr. Jones met with you and other legislators eight times during the quarter, if he spent $250 or more during the quarter on lobbying activity, or if he was paid $250 or more to lobby, then he would have to register. In the example you gave, it would be highly unlikely he would meet any of the se criteria.

Chairman RIBICOFF. Under S. 815, a record of each contact between a lobbyist and high government official intended to influence a policymaking process must be included in the lobbyist's quarterly report. How would you define the type of contact which a lobbyist must report? For example, would you include a contact simply seeking information on the status of a proposed agency action?

Mr. GARDNER. Really, again, this is something the regulations would have to define, and reason and good sense would be the guiding criteria. I think what you have to watch is opening up any loophole which would suddenly multiply your social calendar by 10 so that lobbyists could get at you on social occasions. I think, even on a social occasion, if there is a serious, pointed, and sustained effort to persuade you on some point, it ought to be recorded. Judges are quite familiar with the discipline that is necessary in talking out about a case out of court, and will, if necessary, cut off a conversation.

Chairman RIBICOFF. In other words, let's say, which has happened between you and myself, although it had nothing to do with Common Cause, let's say we go to a dinner at a large hotel and you have a car and driver with you, and you say, "Abe, can I give you a ride home?" And I say, "Delighted." In the process of taking me to my home we get into a conversation, as you often do, about something pending in the Government that you have an interest in. You might be giving me your point of view and I give you mine. Would you then have to report that on such and such a night, coming from the Shoreham Hotel, I talked to Senator Ribicoff?

Mr. GARDNER. I would feel bound to report. Dick Clark has a comment on that.

Mr. CLARK. I think one way we've gotten at that particular problem is to require reporting only if the individual making the contact is otherwise required to registered and report as a lobbyist. In other words, was he spending or receiving a certain amount of money for his activity? There is no question that, by the nature of the lobbyist's job, and as was pointed out in the testimony by various job descriptions, there is no such thing, in many instances, as a social contact. I mean it is all business contact. There should, as a rule, be no distinction as to the context in which you pursue that influence with the Congressman or what executive branch official.

As a lobbyist, I am well aware of that. It is not just 9 to 5. It is maybe 9 to midnight, whenever you can make the contact. I think we need to get at that particular problem. I think that if I were otherwise required to register as a lobbyist, if I were meeting the expenditure threshold, then for certain I should record that contact if I attempted to influence you.

Chairman RIBICOFF. You see Washington is really a company town. Everything done here is government business. When we go back to our respective States, if it is agricultural, an agricultural group, you will talk about agriculture, manufacturing, or labor. But I do not suppose you can go anywhere in Washington without having some discussion at any social event with some issue that involves government. Almost anything you do in this city. I pick up the paper and I see that President Ford wants to play golf at Burning Tree, and he calls up old friends of his.

Properly, one man may be an executive of United States Steel or Ford Motor Co., and I wouldn't fault President Ford who feels comfortable playing golf with his old friends.

Would these men have to say on such and such a day I played golf with President Ford or played golf with Abe Ribicoff or Bill Brock, or we went out there and there was an opening for a foursome, and you became a member of a foursome? I mean I think we have to do, what I am driving at, John, is that I believe you need legislation of this type. But I do not want to do something that is really ridiculous. I do not want to make the ordinary give and take an association of one human being with another clouded or surrounded with suspicion. I think this would be a tragedy, and people just would not feel free to talk with one another, just talk.

I feel this is what we zealously have to be sure of as we draft this legislation. I feel this way personally. I do not know if I speak for my colleagues who also cosponsor this legislation. But these are some of the thoughts that come to mind. I think you should give this a lot of thought, because there is one way that this will bog down, and be meaningless—if it gets ridiculous.

Senator Percy.

Senator PERCY. Following up on the chairman's trend of thought, when we define a lobbyist as a person who makes eight oral contacts in a quarter with Federal officials, would this be somewhat onerous? I could envision a single individual going to a reception and having eight conversations at that reception. Is he, then, in a position where he would have to register as a lobbyist? Is this too tough a definition?

Mr. GARDNER. Well, again, we are talking about the kinds of refining of language which will ultimately make good legislation or very bad legislation. I think somebody will just have to determine what is the dividing line. It is very hard to do.

Mr. CLARK. Senator, I think it is important to understand the problem that kind of provision addresses itself to. There are individuals in positions of extreme importance and power in this country who do exert tremendous influence and who do not have to walk the floors of Congress on a daily basis in order to exercise that power.

Recently, during the tax bill the head of a major corporation was in town and, by virtue of the fact of his presence, there was a signal to the elected Representatives there that this was a big issue with him, particularly with respect to amendments that the corporation was pushing. The problem is that, in certain situations, a single contact or 2 or 3 contacts by a high-level official can be far more significant than 25 or 30 contacts by, let's say, a full-time lobbyist.

That is the problem we are speaking to, whether the ways approached in your bill, which is an attempt to prorate the expenses of the lobbyist in order to get at that particular problem, or whether it is through the eight contacts threshold. Those are two approaches to the problem.

I think others should be forthcoming.

Senator PERCY. I would like to get your comments on enforcement, because on any piece of legislation, the effectiveness of it depends upon how well it is enforced. I was impressed with your remark in your prepared statement that the Justice Department has consistently failed to prosecute blatant violations of the law. Both Senators Kennedy and Stafford commented on the fact that the Justice Department has been less than vigilant in its task.

In S. 815, GAO will point out later this morning that this piece of legislation limits the role of the Federal Election Commission to referring apparent law violations to the appropriate law enforcement authorities. However, in S. 774, Senator Ribicoff and I have given the Commission the power to prosecute, defend, or appeal any criminal action to enforce the provisions of the bill.

Would you care to comment, in the light of the testimony we have had, on your own feelings on this particular question of enforcement and how we can best go about that?

Mr. GARDNER. I think your characterization of the Department of Justice as less than vigilant is the kindest phrase of the morning; 28 years, and only four prosecutions is certainly a lack of vigilance. We feel that the Federal Elections Commission is well fitted to take this task on, and that it should be given full powers to do so. We do not believe that it will unnecessarily burden, in fact, it may strengthen, the FEC to have this additional task.

Senator PERCY. My last question. I would like to give you a chance to step back from the details of the legislation now and just again look at the problem.

I will take two specific cases. In Chicago we have a murder about every 8 hours, 24 hours a day, about 1,000 a year. That is typical of the trends that we see in urban environments. We know that about two out of three of those murders are between people who know each other, not just crime on the street. It is people who know each other,

relatives, friends. They get into an argument, they have had a couple of drinks under their belt, and they go grab a gun. It is readily available, quickly and easily available to them. The very fact that right in Georgetown not far from some of our homes, we have had two marine officers shot because the fellows they were arguing with happened to have guns right out in their cars. They just went out in the car and got them and shot them right on the stool of a hamburger stand on M Street in Georgetown.

The availability of guns in this society is taking freedom away from us as we try to be the freest society on earth. Yet the National Rifle Association in all its activities has prevented any gun control legislation from being at all effective or being adopted. We finally passed the Saturday night special bill, which was a miserable bill, but we all voted for it, to just get something, and that was even killed in the House.

You point out in your testimony that in 1950, 40 times more was spent on lobbying activities than was actually reported under the law. And it is getting worse, not better.

The second piece of legislation is the Consumer Protection Agency, or the Agency for Consumer Advocacy. I never have in 9 years been subjected to such intensive lobbying. The big arguments lobbyists use is proliferation of government and the $15 million we asked for in the first year is too much money. Yet, that is not even equivalent to the advertising budget of a single one of these companies that is lobbying so effectively against it.

We just received a letter from the President of the United States that could have been written by one of the lobbyists. In fact, the language is pretty close to some of the language that they have used in their lobbying materials, saying that he is going to oppose this legislation.

From your vantage point as an out in the open, sunshine lobbyist, how effective do you think these lobbying activities are against the gun control legislation, against the Consumer Protection Agency, and what will this legislation before us do to at least try to bring to public attention the magnitude of the lobbying effort that is undertaken against legislation that we happen to think in the committee, in a vote of 11 to 1, is in the national interest? And yet we have not up to this date been able to get it enacted into law.

Mr. GARDNER. The National Rifle Association, of course, is a classic example of an organization which has not normally registered even under the existing law. Although I believe it registered the last quarter, didn't it?

Mr. COLE. Yes, last year.

Mr. GARDNER. Because it sees itself not as lobbying but as soliciting others, stimulating others to lobby. Local and State units actually do the actual lobbying. This would all be brought to the surface under the proposed law. I just would comment that nothing in 5 years of our activities in Common Cause has been more impressive than what happens when you let the sunshine in.

If you bring these things to the surface, they often change their character. Even if they do not change, at least you know what you are dealing with in the way of opposition. Members of Congress can know the extent to which, say, there is an artificially stimulated campaign.

Mr. CLARK. I would like to add to that, Senator, that appendix A of the testimony before you contains a summary report on our monitoring of the Federal Energy Administration. The Federal Energy Administration has adopted a logging provision. I think the statistics you will find there are very revealing in terms of the kind of contacts made and the kind of people with whom they have been meeting. We found that energy-related industry contacts with FEA officials ranges roughly between 75, 85 and 90 percent contrasted to 6 or 8 percent with public-interest-oriented groups. This is not to say that energy-related industries do not have every right to make their case.

What we are saying is that perhaps, in this instance, public officials will find it incumbent upon them to spend more time addressing themselves to some of the interests presented by the public-interest-oriented groups. In other words, it is a question of the incentives that will be provided to public officials to seek more balanced input.

I also think it is important to have that kind of information available for the record for purposes of the media. Many people across this country have no other way of knowing what is going on in their government, except through the media.

Again, if we look at some of the lobbying that you have related that there has been on some of our key legislation, the only reason we found out the kind of activities that have been going on is because of the diligence of some very determined investigative reporters. We think that that information should be provided as a matter of course; it should be available, and should be easily accessible to the media—and others. This is the only way in which the public is going to be able to assess its Government and to hold its Government officials accountable for the actions that they take.

Senator PERCY. Thank you very much.

Chairman RIBICOFF. Senator Brock.

Senator BROCK. Mr. Chairman, I think, or I am sure, there is no disagreement with what we are attempting to achieve. But I think Senator Ribicoff puts his finger on one central point we have to keep in mind throughout this discussion. That is the possibility of writing a law that is so inhibiting that it becomes ridiculous and, in effect, bogs down of its own weight. I do not think any of us want to see that happen. If it is going to work, it has to work efficiently or we are engaging in an exercise in futility.

I would like to cite a personal experience and ask you how we cope with it. I am sure the individual would not mind my mentioning his name. Dr. Bill Russell was in my office this morning. Dr. Russell is an environmentalist and he is enormously interested in the mountain areas of eastern Tennessee. He comes up at least three or four times a year at his own expense. I do not know that any group pays his way or participates in his efforts but he is trying to get the Ober River included in the wild and scenic rivers system. He is working on a wilderness proposal in relation to the Smokies. He has worked on bike trails in Anderson County. Like most people who are interested in this area, he is just a remarkably fine person, completely dedicated, and has absolutely nothing to gain as a result of his labors other than public service in the finest sense of the word.

Now I wonder if we cover people like Dr. Russell, whether we are going to make his efforts virtually impossible. He is not going to know—and I am speaking generically of him as a class of individ-

uals, not personally of course—he is not going to know when we pass a law like this that it covers him, and that he has to register. Yet if he does not, he is subject to, what? a $10,000 fine and other extensive penalties of that sort?

What do we do about that kind of a situation? How do we avoid it?

Mr. GARDNER. I would say that first, education of the public will have to go on so that everyone is aware of the fact that there are lobbying laws. Second, a person of the sort you describe would be very close to the borderline, and might be making so few contacts he would not have to register.

Senator BROCK. I think he would, though. He is contacting most of the members of the Tennessee delegation. I do know he has talked to the House Interior Committee staff, Senate Interior Committee staff, and people like that.

Mr. GARDNER. I would just say that for the small-scale lobbyist, that reporting requirements are not onerous. And you are not convicting yourself of anything by registering as a lobbyist.

Senator BROCK. I do not think he would object at all in stating to the whole world what his purpose is because he believes very deeply in it. There is nothing to hide.

Chairman RIBICOFF. If the Senator would yield, this is what bothers me. To me it would seem we should encourage Dr. Russell to come up to Washington or to get a hold of Senator Brock when he goes to Nashville and say, "Now, look, there is a problem." Or take him for a ride through the Smokies to show what he is trying to achieve. I have that frequently in Connecticut where you have dedicated people who are interested. Now I am delighted to have them interested in public causes. They give me the information, to take pictures, and you need it, and you are delighted, and you are very pleased as a public official to have active people like that working with you because you often find great opposition in the area by people who do not want to have a park.

But once you take men or women like this, who do this, who get no money for it, who do it at their own expense, and you give them the extra burdens of reporting and filing, my feeling is you discourage the activity of people who in a democracy ought to have been active in government.

Senator BROCK. Exactly.

Chairman RIBICOFF. This is what would bother me very, very deeply.

Mr. GARDNER. May I ask Mr. Cole to comment?

Mr. COLE. As Mr. Gardner said during his remarks, we are very conscious of trying to avoid any chilling effect on voluntary, small-scale lobbying activity. On the other hand, we would very much like to see the committee provide adequate coverage of those people who have relatively few contacts, but may very well have a significant influence on legislation.

Requiring Dr. Russell, who is espousing concerns that many of us are sympathetic to, to report may of first blush seem unfair or burdensome. But the criteria for who reports and who does not report cannot be colored by the cause they are espousing. If he is systematically contacting his entire State delegation and perhaps others, we think he should register and report his activities. We are not talking about very onerous requirements as Mr. Gardner said. And I think that if

notified of the law's requirements, most people lobbying on that scale would be able and willing to do this and would not feel any chilling effect.

As was pointed out in the testimony, I think the only chilling effect which would be felt would be by people lobbying who did not want their activities known. I do not envision Dr. Russell or people like him would have any objection. If they are doing minimal lobbying, it is very likely they would not be covered or, at most, would have to file very brief reports.

Where you draw the line, where it becomes not so minimal and it must be recorded and reported is what we will continue to work on, and what we urge the committee to consider very carefully.

Chairman RIBICOFF. You see, what bothers me, this is one of the great problems of reformers. I say this in the best sense of course. Lobbying has gotten a secondary generic meaning. I think if you say a person is a lobbyist, in the average mind there is something bad about it. Now I take it Dr. Russell's all over this country, and I know I have many people like this, dedicated, in my own State of Connecticut, I think that they would be shocked if you said, "You are a lobbyist." They would say, "My God, what am I doing wrong?"

They are not doing anything wrong. All they are doing, they say, "I am trying to bring to the attention of Senator Ribicoff a problem in my area, and I want to do everything I can to see that it is achieved." If he suddenly finds that he is a lobbyist, you would be surprised, the people against him would use that to knock down his position and discourage him. They would use it as a term of approbia. You can't just cast it aside and say, "Oh, this does not mean anything."

The man should not worry about filing these papers. But it does discourage people.

Mr. COLE. Speaking as one who started filing as a lobbyist almost 3 years ago and who has had to put up with his share of derogatory comments, I recognize that is the case. But to the extent more and more people register as lobbyists and see that there need be no stigma attached to it—that lobbying is an honorable undertaking—I think you would find fewer people who immediately associated something unsavory with lobbying. What we are seeking is to require those who lobby on a systematic and substantial basis to give disclosure reports. There may be some question about where you draw that line, but we strongly believe that lobbying should not be a subject of ridicule and we feel it would not be if it were reported adequately.

Chairman RIBICOFF. It should not be, but Dr. Russell is not the same as ITT, the National Rifle Association, AFL-CIO or the National Association of Manufacturers. I think this concerns me very, very deeply.

Senator BROCK. The reason I raise the question is that I think we need more people like that, not less. We need to encourage it, not discourage it. I am afraid not only is there certain approbrium attached to the word "lobbyist" itself, which whether we like it or not is there, and no law we pass is going to change that for maybe a generation, but hopefully your statement will come true. But it is not true now.

Mr. CLARK. I think what we are really all about here is dignifying the profession of lobbying. Whether that is done informally or formally, by true professionals or by average citizens, I think the Gov-

ernment cannot be in a position or posture of supporting, sanctioning, or otherwise giving license to secrecy, and that Government has to be in the open.

It is not a question of good guys and bad guys. It is a question of public information, public disclosure. One of the things that is in both bills is an exemption of travel and lodging expenses. This is one provision that had been made in an attempt to alleviate the problem I think we have been discussing.

Senator BROCK. Again, I am not arguing with the objective you seek, as I think you know. I just do not want us to break this thing down with requirements that are impossible of achievement and which do not reach the real purpose of the bill.

I wonder if you in your advice to this committee and your lobbying effort should not give some consideration to maybe either modifying the reporting requirements to have some gradation of report, a much simpler form, less onerous, less frequent, what I would call the casual nonself-identified lobbyist, or perhaps modifying it in some form, maybe along the lines of the Teague approach, to have some exemption for contact, with your own congressional delegation or something along that line. I do not know just what I am looking for, but I am afraid we will not achieve the result we desire. It may have an adverse consequence. That is why I would appreciate your thoughts as to how to address this problem.

Mr. GARDNER. We will certainly do that, Senator.

Senator BROCK. Thank you.

Chairman RIBICOFF. If I may add, being the senior member of the Connecticut delegation, I often get requests from different groups in Connecticut. This is not national, Connecticut.

Dear Senator Ribicoff: We are concerned of X, Y, and Z that affects the State of Connecticut or our industry. Would you be good enough to try to get the delegation together in your office at 2 o'clock on Wednesday so we have an opportunity to talk with them.

Which is convenient. They do not have to go around separately talking to eight members.

I often do that. And I am sure Senator Percy finds himself doing it, and Senator Brock. Usually it is a matter of local interest. This is not national scope. It is not hidden. The local press knows about it. They come in the office and take pictures, as a matter of fact. They are not hiding anything. They just have a Connecticut problem.

I think what is bothering all of us, to make sure we do not prevent or discourage our constituents from making legitimate demands and requests upon us, even though you would say it is of a special interest because it does affect them, that is why we are here. You must keep open the line of communication between your constituents and yourself.

I just throw this out because I think you should be doing something about that because it is obvious it will concern all of us here as a problem that we should address ourselves to.

Mr. GARDNER. Right.

Senator PERCY. Mr. Chairman, just one comment.

Common Cause has provided to us appendix D[1] on their open

[1] See appendix D, p. 121.

system program in which they record Members of Congress as to their attitudes on lobby disclosure and logging. I notice I am listed in favor of logging but there was no response from me on lobbyist disclosure. I do not recall ever receiving the form. Let it be recorded that I am in favor of lobby disclosure.

Let me also, in the spirit of this meeting, disclose my conflict of interest as a card carrying, dues paying member and proudly so, of Common Cause. [Applause.]

Chairman RIBICOFF. Thank you very much, Mr. Gardner, and your associates. We appreciate your coming here.

Mr. GARDNER. Thank you, Senator.

[The prepared statement and additional material submitted for the record follows:]

54-076 O - 76 - 4

Prepared Statement of John W. Gardner, Chairman, Common Cause

Mr. Chairman, I am honored to have the opportunity to appear before this committee. Common Cause supports the new lobby disclosure legislation S. 815 and S. 774 under consideration today, and we commend the leadership exhibited by you and other co-sponsors on this issue. Lobbying has become one of the most secretive and potentially corrupting ingredients in American politics. The time for legislation to bring it out in the open is long overdue.

Secrecy and Lobbying

Citizens should be able to know the identity and activities of special interests that are seeking to influence national policy through lobbying. But such information is not available to citizens today. Most lobbying activities go on behind a veil of secrecy, despite a 1946 law that is supposed to require disclosure of lobbying receipts and expenses. The Federal Regulation of Lobbying Act of 1946 is ambiguous, riddled with loopholes and impossible to enforce. Many of the most powerful lobbyists mock the law through non-compliance with its reporting requirements. For example:

-- Last year the American Trial Lawyers Association set up an elaborate and devious lobbying system to oppose no-fault auto insurance. It secretly arranged for mailgrams opposing the legislation to be automatically sent to key Congressmen by Western Union offices around the country. Association members needed only to call Western Union and give the names of friends and associates,

and for each name given, 10 messages were sent off to Capitol Hill. The Association even arranged for Western Union's sales force to encourage local trial lawyer associations and other interested groups to use the mailgram service. The result was a deluge of messages to key congressional offices protesting no-fault insurance, all seemingly sent individually by concerned constituents. In one case, 31 sets of 100 telegrams were all sent by the same individual.

The American Trial Lawyers Association was not registered as a lobbying organization.

-- In 1971 when ITT was trying to get the Department of Justice to drop its antitrust suit against ITT, executives made visits to Cabinet officials and White House staff members. These contacts, unknown to the public at the time, only became public as the result of later congressional hearings. It appears, moreover, that high-level personal contact is ITT's favorite lobbying tactic. In job descriptions submitted during the nomination hearings for former Attorney General Richard Kleindienst, six ITT officers noted that contacts with key congressmen and various agency officials are an important part of their job. As one executive wrote: "There are several executive departments which are important to ITT, and therefore contacts have to be maintained ... I spend at least two nights a week with government personnel. These evenings include socializing, arranging and attending parties, attending sports events and other functions. Weekends are usually spent with Hill personnel ..."

Neither ITT, nor any of these six officers, are registered as lobbyists.

-- The American Electric Power Company, one of the nation's largest utility holding companies, recently conducted a massive advertising campaign to promote increased development of coal reserves. Most of these reserves are either owned or leased by AEP, which owns seven Midwestern electric companies and six mining companies. The campaign consisted of 36 advertisements in 260 national and local publications, and cost AEP approximately $3.6 million. While most of the ads simply aimed to convince the public that coal is the country's answer to the energy crisis, some of them specifically called for various legislative changes.

The AEP is not registered under the present lobby law.

-- American drug companies have been lobbying HEW to reject a plan that would save taxpayers $90 million annually. The plan would restrict prescriptions under Medicare and Medicaid to the lowest-priced drugs having the required therapeutic benefits. As part of the campaign to block this plan, the firms have solicited letters from pharmacists and doctors opposing the plan. Ayerst Laboratories, for example, ordered 200 of its salesmen to obtain letters of opposition from five druggists each. According to one salesman, these letters were then to be presented by the company's president to HEW Secretary Casper Weinberger "as evidence of the opinion of the nation's pharmacists."

Neither Ayerst Laboratories, the company's president, nor anyone else representing the firm are registered as lobbyists.

As these examples illustrate, the efforts of organized interests to influence government decisions involve a variety of activities: visits to congressional offices, high-level contacts in the Executive Branch, the stimulation of letters to Congress, expensive advertising campaigns, social relations with public officials and so on. The 1946 lobby law defines lobbying in such extremely narrow terms that many of these activities fall outside the definition, and those who engage in these activities can maintain they are not subject to the law's reporting requirements. For example, the Trial Lawyers Association and American Electric Power can maintain they are not lobbying Congress through direct contact, but merely arranging for others to do it, so that their activities are not covered. Ayerst Laboratories was lobbying the Executive Branch, so its activities were not covered by the 1946 law.

These loopholes in the present law account for the secrecy which hides most lobbying activities. This secrecy is convenient for the lobbyists, and often for the government official as well. But it is not convenient for the public, which has a right to scrutinize the activities of individuals or groups that are spending money secretly to manipulate the political process.

Ingredients of Reform

As the committee begins reviewing this legislation, we urge

that it pay attention to five ingredients which are essential for a good lobby disclosure law. Both S. 815 and S. 774 contain these ingredients, with one exception. We hope the committee draft will be consistent with them on these five points:

(1) Coverage of Executive Branch. One of the main deficiencies in the 1946 lobby law is that it applies only to lobbying of Congress. Executive Branch agencies and departments are subject to intense lobbying pressure. Everywhere you look in the Executive bureaucracy, you see the presence and influence of special interests. The efforts of these groups to influence agency rule-making, contracting, and other policy matters should be covered by any new lobby disclosure law.

(2) Logging of Outside Contacts. New legislation should also require Executive Branch policy-makers to log outside contacts and communications. The need for this is dramatically illustrated within the Federal Energy Administration, where top officials are required to keep and publish such logs. Our analysis of logs kept by these officials shows that since FEA Administrator Frank Zarb took office last December, 91 percent of his meetings with outside groups have been with energy industry representatives. This is typical of other important policy-makers as well. From October 1, 1974, to March 15, 1975, the percentages of meetings with energy industry representatives were as follows: Thomas Noel, Zarb's assistant--82 percent; Robert Montgomery, General Counsel--75 percent; Marmaduke Ligon,

Assistant Administrator for Energy Resource Development--82 percent; and Gorman Smith, Assistant Administrator of Operations, Regulations, and Compliance--68 percent. The top 10 FEA officials held a total of 458 meetings with non-governmental parties during this period, only 6 percent of which involved organizations such as consumer and environmental groups, state conservation agencies, educational institutions working on conservation projects, and so on.

Broad logging requirements would facilitate public scrutiny of such interaction between agency officials and outside interests. We believe logging requirements should be incorporated into lobby disclosure legislation.

Last week the Administrative Practice and Procedure subcommittee held hearings on a comprehensive logging measure, S. 1289. Representatives from the Consumer Product Safety Commission, the FEA, the Food and Drug Administration, the FTC, and the ICC all voiced support for the basic principle and approach contained in this bill. Common Cause's testimony at those hearings is attached (Appendix A).

(3) Broad Definition of Lobbying. A new law should define "lobbying" in a way that covers the variety of activities that lobbying involves. This means that it would cover individuals and organizations which lobby directly, or indirectly by employing or soliciting others to do it. For example, when the chairman of General Motors writes to every stockholder in the corporation, as he did last February, urging them to write their Congressmen for

a five-year delay in auto emission standards--that's lobbying. Neither Chairman Murphy nor General Motors itself are now registered as lobbyists.

The law should also cover those who lobby in relation to their employment--such as officers in corporations, trade associations, and labor unions--even though they are not specifically hired as lobbyists and lobbying is not a substantial part of their job. S. 815 attempts to cover such individuals by covering those who lobby directly on eight separate occasions during a quarter regardless of how much money is involved. S. 774 tries to cover them by determining whether the prorated portion of their salary attributable to lobbying exceeded $250 a quarter to lobby. This Committee may choose either one of these approaches or may devise a still better way of covering these individuals. They must be covered. The law should be limited, however, to those who either receive or spend a significant amount of money for lobbying or who engage in a significant amount of lobbying activity.

(4) Comprehensive Reporting Requirements. The committee's bill should require lobbyists to disclose the source and amount of their income, their itemized lobbying expenditures, the names of officials they have contacted, the government decisions they have tried to influence, and their gifts, services, loans or other favors to public officials. Lobbying organizations should also be required to report the activities of any employee, officer, or

other person who lobbies in their behalf.

(5) Strong Enforcement Provisions. Nearly thirty years of experience with the present law has shown that without strong enforcement, lobby disclosure requirements--no matter how broad and tightly drawn--will be evaded. The Justice Department has consistently failed to prosecute blatant violations of the law, and no enforcement powers are given to the Clerk of the House or the Secretary of the Senate. We believe a new law should give the Federal Elections Commission responsibility for enforcing these requirements and making the information disclosed available to the public. The FEC would have the power to investigate possible violations, issue subpoenas and take depositions, prescribe regulations, and initiate civil proceedings to compel compliance.

Arguments against Lobby Disclosure

Opponents of this legislation have argued that the reporting requirements are overly burdensome.

Our own experience totally refutes the argument. Common Cause has had little difficulty in filing detailed lobbying reports on the Federal level or in the 28 states where our lobbyists have complied with state statutes. Our Federal reports give total expenditures on advertising, wages, printing and mailing, office overhead, telephone, and other items. They include numerous pages of itemized expenditures of over $10, including the date, amount, recipient, and purpose of each expenditure. A copy of Common Cause's lobby

report for the fourth quarter of 1974 is attached (Appendix B).

The financial records required in S. 815 and S. 774 are already kept, in large measure, by many lobbying organizations as part of general accounting practices. The disclosure of this information is a small additional burden. Moreover, the burden of reporting lobbying activities and expenses increases with the amount of lobbying done. The small-scale or occasional lobbyist would not find it much of a problem. The burden would fall where it should--on those who seek to influence government decisions through expensive or substantial lobbying activities.

Opponents of the legislation have also argued that broad disclosure requirements will deter outside parties from communicating with government officials. But this is simply not true. Legitimate forms of interaction between public officials and outside interests will continue unabated, but out in the open. Communications from individual citizens, acting in their own behalf and with minor expenses, are not covered by the legislation. There would be no chilling effect on this kind of citizen participation in government affairs. The only chilling effect would be on those engaged in organized lobbying which they do not wish to have publicly known.

Still another argument advanced in opposition to this legislation is the assertion that it is unconstitutional because the reporting requirements unjustifiably restrict the right to petition government for a redress of grievances. But the legislation would not restrict, restrain or prohibit any lobbying activity--it only

requires disclosure. The Supreme Court has held that the benefits justify lobby disclosure laws. A memorandum on the constitutionality of lobby disclosure requirements is attached (Appendix C).

The inadequacy of the present statute has long been apparent. In 1950 a House committee studying the present lobbying law said spending by lobbies was over 40 times larger than the amount reported. James Deakin, author of The Lobbyists, the most comprehensive book on the subject, said that for every dollar reported $200 is spent. He also said that the number of lobbyists who actually register is at best 20-25% of the real total. A Senate subcommittee once estimated the lobby-related expenditures of the National Rifle Association at $2 million a year. Most of these expenses do not show up on the Association's lobby reports. In fact, until last year NRA did not even register. The Association is presently spending enormous sums to defeat gun control legislation. As part of this campaign, they have secretly generated thousands of letters to the Consumer Product Safety Commission opposing a rule-making proceeding to ban bullets as "hazardous substances."

All experts agree that there is more lobbying today than in 1950. Since 1950, government expenditures have increased 5 times. Yet in recent years only half as much lobbying expenditure has been reported as was reported in the earlier year.

Common Cause, from the beginning, scrupulously reported all lobbying expenditures. As a result, in the final quarter of 1970, when our organization was only four months old, we appeared to be

by far the largest lobbying operation in the country--twice as big as the nearest competition. In the second quarter of '71, when we were ten months old, we appeared to be five times as large as any other lobby. Among those either not registering or reporting no expenditures in the latter quarter, were General Motors, the American Bankers Association, ITT and the National Rifle Association.

Time to Act

Mr. Chairman, the momentum for a new lobby disclosure law has been steadily growing. The Railsback-Kastenmeier bill in the House, which is identical to S. 774, now has 130 co-sponsors. The results of a Common Cause survey conducted last year show that 318 House members favor comprehensive disclosure of lobbying activities, and 263 members believe that a new lobby law should also require Executive Branch policy-makers to log outside contacts and communications. Only 14 respondents indicated opposition to logging. Of the 58 Senators who responded to our questionnaire, 48 voiced support for new lobby disclosure legislation, and 45 supported the logging provision. The results of this survey on these issues are attached (Appendix D). The House Republican Task Force has called for a stronger lobby law with logging requirements. At the June 1974 National Governors Conference, the governors endorsed lobby disclosure legislation. Eighteen state legislatures have tightened existing lobby disclosure laws or enacted strong new statutes over the last three years. A chart summarizing existing state lobby

laws is attached (Appendix E). Many of these laws are far more comprehensive than the Federal statute.

It is clearly time for Congress to act on this issue. It has sat on lobby reform legislation over the last three years. But it can do so no longer. Strong legislative measures have now been introduced in both Houses, and they have broad support. Enactment of a new lobby law should be a top priority for Congress this year.

Thank you very much.

Appendix A

TESTIMONY OF

FRED WERTHEIMER, VICE PRESIDENT OF OPERATIONS

COMMON CAUSE

in support of S. 1289, the Open Communications Act of 1975

before the

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

of the

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

April 14, 1975

Mr. Chairman, I am grateful for the opportunity to testify today on behalf of Common Cause. We strongly endorse S.1289, the Open Communications Act of 1975, and commend the outstanding leadership taken by you and the other co-sponsors on this crucial legislation.

The momentum has been steadily growing for comprehensive logging by agency officials of outside contacts and communications. Three major Executive Branch agencies -- the Department of Justice, FEA, and the Consumer Product Safety Commission -- have promulgated logging regulations over the last two years. The Railsback - Kastenmeier lobby disclosure legislation in the House, which contains comprehensive logging provisions similar to those in S.1289, now has 130 co-sponsors. And the results of a Common Cause survey conducted last year show that 263 House members of the 94th Congress supported Executive Branch logging, while only 14 respondents indicated opposition. Of the 48 Senators who voiced an opinion on this issue, 45 supported logging legislation. This is clearly a reform whose time has come.

S.1289 goes to the heart of one of the most urgent challenges facing the Federal government: the need to reform Executive Branch agencies and departments. These agencies make decisions which have direct and critical consequences on the lives of all

Americans. But very few Americans have any idea of how these agencies make decisions or how they as citizens can make their voice heard when decisions are being made. The quality of our food, the price of gas and electricity, the renewal of our cities, the development of public lands, the quality of our air and water, and countless other matters are substantially determined by Executive Branch activities. Every citizen, every consumer, every taxpayer is directly affected.

But when you look at who has access to agency policy-makers, you see the overwhelming presence and power of regulated industries and special interests. You see agribusiness firms seeking farm subsidies from the Agriculture Department. You see utility companies inside the Federal Power Commission and the new Nuclear Regulatory Commission. You see coal and oil companies seeking leases from the Interior Department. You see General Motors simultaneously lobbying the EPA, FEA, and Department of Transportation on auto emission standards.

These organizations have every right to do this. Most executive agencies have their own special constituencies -- the private firms, labor groups, or industries regulated by them or to whom they award Federal grants and contracts. That these groups seek to influence agency rule-makings, contracting, and other policy matters is not surprising. Nor is the fact that it's done on a massive scale.

The problem is that the influence of these groups in the agencies has reached unprecedented proportions. This is dangerously

undermining public confidence in our government. It is similarly undermining the Government's ability to responsibly regulate private sector enterprises and protect the public welfare. This is evident in wasteful government subsidies, nonenforcement of antitrust laws, and other regulatory decisions which perpetuate inflation and unjustifiably benefit certain private interests. Executive agencies today primarily serve their special interest constituencies. We wonder what becomes of the public interest in all this.

Several reforms are needed to balance the disproportionate influence of special interests in Federal agencies and make the bureaucracy more responsive to the general public. These include stronger conflict of interest regulations, open meeting requirements, disclosure of activities by outside lobbyists to influence agency action, and more balanced representation on advisory committees.

One of the most critical reforms, however, is public disclosure by agency policy-makers of outside contacts and communications. There is virtually no public scrutiny of the interaction between these officials and outside representatives. Nor does the public have ready access to documents submitted by outside parties on policy issues. This secrecy undermines accountability and effective public participation in agency proceedings. The logging requirements in S.1289 would remedy these problems. S.1289 would only cover higher level governmental officials.

Industry Influence in Agencies

It is not hard to document the need for this legislation. There is clear evidence of the day-to-day interaction between regulated industries and agency officials and of the extensive efforts of industry lobbyists to influence agency policy.

The Federal Energy Administration is a good example. Last fall the FEA adopted, in response to recommendations by Common Cause, a regulation requiring top policy-makers to log their meetings with outside parties. Although this regulation was a far cry from the model provisions we submitted, it was certainly an important step toward greater openness. It has now revealed some startling facts about outside contacts with FEA officials.

Our analysis of the meeting logs shows that since FEA Administrator Frank Zarb took office last December, 91 percent of his meetings with outside groups have been with representatives of the energy industry. This is typical of other important policy-makers as well. From October 1, 1974 to March 15, 1975, the percentages of meetings with industry representatives were as follows: Thomas Noel, Zarb's assistant -- 82 percent; Robert Montgomery, General Counsel -- 75 percent; Marmaduke Ligon, Assistant Administrator for Energy Resource Development -- 82 percent; and Gorman Smith, Assistant Administrator of Operations, Regulations, and Compliance -- 68 percent. The top 10 FEA officials held a total of 458 meetings with non-governmental parties during this period, only 6 percent of which involved organizations such as consumer and environmental groups, state conservation agencies, educational institutions working on conservation projects, and so on.

There are two points to be drawn from all this. First, these figures illustrate the kind of information which even a narrowly-drawn logging regulation can provide. Second, they indicate the overwhelming degree of industry involvement with agency policy-makers, and therefore the need for more comprehensive logging requirements.

The Interstate Commerce Commission further illustrates this second point. The shipping industry has close ties with ICC officials and lobbies daily for favorable decisions. It appears for example, that commissioners have been cleared by industry executives before being officially nominated for the post. Commissioners have been enticed with lucrative industry positions after they leave the ICC, and twelve of the last seventeen to leave have accepted these offers. Industry executives have also taken high posts within the Commission. And in 1973, sixteen industry groups rented desk space at ICC to keep track of hearing decisions, rate changes, and policy information. Access to ICC policy-makers is readily available and very effective. It is no wonder that ICC's regulation of shipping is accused of keeping rates artificially high and costing consumers over $4 billion annually.

There are other examples of special interest efforts to influence executive action through contacts with agency officials:

-- There is the well-documented case of ITT executives who unknown to the public called personally on Cabinet officials and White House staff members in a widespread campaign to pressure

the Justice Department to drop its antitrust suit against the corporation. It appears, moreover, that high-level personal contact is a favorite lobbying tactic of ITT. The job descriptions of several ITT lobbyists note the importance of this approach. As one lobbyist wrote: "There are several executive departments which are important to ITT and therefore contacts have to be maintained. I have several friends in the Department of Justice, Commerce, Post Office, SEC, and EPA."

-- American drug companies have been lobbying HEW to reject a plan to restrict prescriptions under Medicare and Medicaid to the lowest-priced drugs having the required therapeutic benefits. As part of this campaign, the firms have solicited letters from pharmacists and doctors in opposition to the plan, which would save taxpayers $90 million annually. One company ordered 200 of its salesmen to obtain letters of opposition from five druggists each, which were then to be presented to HEW Secretary Weinberger by the company's president.

-- The chief executives of the nation's largest corporations have formed an organization called the Business Roundtable to coordinate personal lobbying visits to key Congressmen and Executive Branch officials. The organization identifies current policy matters which concern big business and provides corporate leaders with fact-sheets on issues, whom to contact, and when. Roundtable's members pay from $2,500 to $35,000 in annual dues, depending on the corporation's gross revenues. This adds up to an annual budget of over $1.5 million.

All these examples illustrate the same problem: agency policy-makers constantly interact with and are lobbied by outside parties -- be they industry lobbyists, labor unions, officials in trade associations, or environmental groups -- and there is virtually no public knowledge of these activities. This secrecy is convenient for the lobbyists, and often for the agency official as well. But it is not convenient for the public which has a right to scrutinize what is going on and to participate in agency proceedings.

Need for Logging

Most observers would concede that outside interests continually lobby agency officials for favorable policy decisions, and that some of these secret efforts have a corrupting influence on the administrative process. But then the question comes: What good will logging do? I have already referred to this in part, but I would now like to address this question directly. We see six basic benefits from logging outside contacts and communications as required in S. 1289:

First, it would enable citizens to hold agency officials accountable for the inordinate access and influence they give to certain special interest lobbyists and groups. We, of course, do not contend that all contacts between officials and outside interests diminish the integrity of agency policy-making. Much of this interaction is necessary and valuable.

But we do contend that representatives of regulated industries, large corporations and other organizations are often given an excessive amount of access to agency officials and influence over their decisions. The patterns of contacts by FEA officials, the constant interaction between ICC policy-makers and the industry they regulate, and the activities of ITT lobbyists and the Business Rountable all illustrate this problem. The decisions being influenced are often ones that directly affect citizen welfare and concerns. Yet without logging, public scrutiny of who is influencing these decisions is conveniently avoided, as is the accountability of those involved.

Second, logging of outside contacts would give the media access to information concerning outside efforts to influence agency decisions, and enable it to better inform the public regarding these activities. This is related to the previous point, but it deserves a special note. Most of the information on lobbying activities inside executive agencies is provided by diligent investigative reporters. But the amount of this information reported is presently minimal. This is largely due to the difficulty in obtaining the necessary facts on who is contacting whom, and on what issues. Logging would make this data readily available and, through media coverage, keep the public better informed.

Third, it would facilitate public intervention in agency proceedings. As I mentioned before, most agencies relate primarily to their special interest constituencies. These interests are constantly involved in influencing agency rule-

makings, the awarding of contracts and grants, licensing decisions, and other policy matters. Logging would put all this on the public record. Public interest groups and other interested parties could then analyze this situation, and counter with their own positions and supporting evidence. This already occurs in some proceedings. But in many others public scrutiny of industry's arguments and written documents is either difficult or impossible. This thwarts effective public participation in agency proceedings.

Fourth, logging would give agency officials a strong incentive to meet more regularly with non-industry groups regarding agency policy decisions. The records of outside contacts required by S. 1289 will often dramatize, both to agency personnel and the public generally, the disproportionate degree of interaction with industry and other special interest representatives. The FEA logging data illustrate the point. We believe this will make agency policy-makers more conscientious about meeting with various other interests and groups concerned about the agencies' decisions and soliciting their views on agency policy.

Fifth, it would provide Congress with information about agency proceedings and decisions which at present is usually unavailable. If Congress is to effectively oversee Executive Branch actions, it must have timely access to the material submitted by outside interests and be able to evaluate the pressures on agency policy-makers. For example, the documents

supplied by the energy industry to FEA, EPA, and other executive agencies should be readily available to Congress, and it should know of the contacts with industry representatives which preceeded executive policy recommendations or decisions. This also applies to agency interaction with outside interests concerning agency budget requests to Congress.

Finally, logging would go a long way toward restoring public confidence in the Executive Branch. A Harris survey last year showed that as many as 74 percent of those interviewed believe "special interests get more from government than the people do." The only way to regain the trust and support of the American people in the political process is to assure that government practices and institutions are worthy of their confidence. With respect to Executive Branch agencies, this means (among other reforms) opening the administrative process to full public scrutiny.

We believe these points make a compelling case for comprehensive logging of outside contacts and communications. But even granting these arguments, some opponents will still maintain that logging is impractical and overly burdensome. This argument should be faced head-on.

As this committee is aware, there are a number of precedents for the kind of logging requirements contained in S. 1289. The FEA, Federal Trade Commission, Consumer Product Safety Commission, and Department of Justice have all promulgated regulations requiring detailed logging of outside contacts, letters, or

meetings. In addition to these, however, Common Cause has found that other Executive Branch agencies have adopted limited forms of logging covering mail, phone calls, office visits, or other contacts. The Administrative Procedure Act already requires various contacts and written communications involving formal proceedings to be made part of the public record.

It cannot be persuasively argued, therefore, that logging is simply impractical. It is already being done in many agencies, although often in a very limited and informal basis. S. 1289 would set uniform logging provisions for all agencies to adopt, expand the logging requirements in the APA to cover additional agency proceedings, and make this information available for public inspection.

But there remains the argument that this legislation imposes overly burdensome requirements. We agree that logging imposes additional administrative responsibilities on agency personnel. The issues, of course, are: first, how much of a burden it imposes; and secondly, whether this burden is justified. On the first question, we believe that the agencies which require logging have demonstrated that it can be made a routine part of an official's daily responsibilities. We have talked to agency employees who have worked under logging requirements and have been told that once they grew accustomed to logging and had the necessary forms, the practice of recording outside calls, visits, and letters became almost automatic. And in regard to the second issue, we are convinced that the benefits derived from logging totally justify

the administrative burden. The task of recording outside contacts and putting these records in the public record, together with copies of written material from outside interests, is a small price to pay for greater openness and accountability in the Executive Branch.

Mr. Chairman, your leadership on this issue has been vitally important, and we urge you and this committee to continue your efforts in behalf of this legislation. Enactment of a logging reform measure should be a top priority for Congress this year.

Thank you very much.

Appendix B

FILE ONE COPY WITH THE SECRETARY OF THE SENATE AND FILE TWO COPIES WITH THE CLERK OF THE HOUSE OF REPRESENTATIVES:
This page (page 1) is designed to supply identifying data; and page 2 (on the back of this page) deals with financial data.

PLACE AN "X" BELOW THE APPROPRIATE LETTER OR FIGURE IN THE BOX AT THE RIGHT OF THE "REPORT" HEADING BELOW:

"PRELIMINARY" REPORT ("Registration"): To "register," place an "X" below the letter "P" and fill out page 1 only.

"QUARTERLY" REPORT: To indicate which one of the four calendar quarters is covered by this Report, place an "X" below the appropriate figure. Fill out both page 1 and page 2 and as many additional pages as may be required. The first additional page should be numbered as page "3," and the rest of such pages should be "4," "5," "6," etc. Preparation and filing in accordance with instructions will accomplish compliance with all quarterly reporting requirements of the Act.

Year: 19 74 ←

REPORT

PURSUANT TO FEDERAL REGULATION OF LOBBYING ACT

	QUARTER			
P	1st	2d	3d	4th
				X

(Mark one square only)

NOTE on ITEM "A."—(a) IN GENERAL. This "Report" form may be used by either an organization or an individual, as follows:
(i) "Employer."—To file as an "employer," state (in item "B") the name, address, and nature of business of the "employer." (If the "employer" is a firm [such as a law firm or public relations firm], partners and salaried staff members of such firm may join in filing a Report as an "employer.")
(ii) "Employer."—To file as an "employer," write "None" in answer to Item "B."
(b) SEPARATE REPORTS. An agent or employee should not attempt to combine his Report with the employer's Report:
(i) Employers subject to the Act must file separate Reports and are not relieved of this requirement merely because Reports are filed by their agents or employees.
(ii) Employees subject to the Act must file separate Reports and are not relieved of this requirement merely because Reports are filed by their employers.

A. ORGANIZATION OR INDIVIDUAL FILING

1. State name, address, and nature of business.

1. Common Cause, 2030 M Street, N. W., Washington, D. C. 20036
Non-profit organization for the promotion of social and physical improvement in the United States.

2. See page 3.

2. If this Report is for an Employer, list names of agents or employees who will file Reports for this Quarter.

NOTE on ITEM "B."—*Reports by Agents or Employees.* An employee is to file, each quarter, as many Reports as he has employers; except that: (a) If a particular undertaking is jointly financed by a group of employers, the group is to be considered as one employer, but all members of the group are to be named, and the contribution of each member is to be specified; (b) if the work is done to the interest of one person but payment therefor is made by another, a single Report—naming both persons as "employers"—is to be filed each quarter.

B. EMPLOYER—State name, address, and nature of business. If there is no employer, write "None."

NONE

NOTE ON ITEM "C."—(a) The expression "in connection with legislative interests," as used in this Report, means "in connection with attempting, directly or indirectly, to influence the passage or defeat of legislation." The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House"—[SEC (e).
(b) Before undertaking any activities in connection with legislative interests, organizations and individuals subject to the Lobbying Act are required to file a "Preliminary" Report (Registration).
(c) After beginning such activities, they must file a "Quarterly" Report at the end of each calendar quarter in which they have either received or expended anything of value in connection with legislative interests.

C. LEGISLATIVE INTERESTS, AND PUBLICATIONS in connection therewith:

1. State approximately how long legislative interests are to continue. If receipts and expenditures in connection with legislative interests have terminated, place an "X" in the box at the left, so that this Office will no longer expect to receive Reports. ☐

2. State the general legislative interests of the person filing and set forth the *specific* legislative interests by reciting: (a) Short titles of statutes and bills; (b) House and Senate numbers of bills, where known; (c) citations of statutes, where known; (d) whether for or against such statutes and bills.

3. In the case of those publications which the person filing has caused to be issued or distributed, in connection with legislative interests, set forth: (a) description, (b) quantity distributed, (c) date of distribution, (d) name of printer or publisher (if publications were paid for by person filing) or name of donor (if publications were received as a gift).

(Answer Items 1, 2, and 3 in the space below. Attach additional pages if more space is needed.)

1. Indefinite

2. See page 4

3. See page 5

4. *If* this is a "Preliminary" Report (Registration) rather than a "Quarterly" Report, state below what the nature and amount of anticipated expenses will be; and if for an agent or employee, state also what the daily, monthly, or annual rate of compensation is to be. *If this is a "Quarterly" Report, disregard this Item "C 4" and fill out Items "D" and "E" on the back of this page.* Do not attempt to combine a "Preliminary" Report (Registration) with a "Quarterly Report." ←

State or Territory
City of Washington
District of Columbia

ss:

AFFIDAVIT

I, the undersigned affiant, being duly sworn, say: (1) That I have examined the attached Report, numbered consecutively from page 1 through page 56 and the same is true, correct, and complete as I verily believe. *(Be sure to fill in number of last page.)*

[*If the Report is for an individual, strike out paragraph "2."*] ←

(2) That I am Secretary-Treasurer of the above-named organization, for whom this Report is filed, and that I am authorized to make this affidavit for and on behalf of such person.

[Print or type name below signature] (Signed) F. Robert Meier (Typed) F. Robert Meier Affiant

Subscribed and sworn to before me on January 10, 19 75

[Print or type name below signature] (Signed) Rita M. Driscoll (Typed) Rita M. Driscoll (Official authorized to administer oaths) Notary Public D.C.

Issued 6-4-58 by the Secretary of the Senate and the Clerk of the House of Representatives. (Superseding Form issued 1-1-51.)

PAGE 1

16—68630-2

Rita M. Driscoll
My Commission
Expires March 31, 1979

NOTE on ITEM "D."—(a) IN GENERAL. The term "contribution" includes *anything of value*. When an organization or individual uses printed or duplicated matter in a campaign attempting to influence legislation, money received by such organization or individual—for such printed or duplicated matter—is a "contribution." The term 'contribution' includes a gift, subscription, loan, advance, or deposit of money, or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution"—§ 302 (a) of the Lobbying Act.

(b) IF THIS REPORT IS FOR AN EMPLOYER.—(i) *In General.* Item "D" is designed for the reporting of all receipts from which expenditures are made, or will be made, in connection with legislative interests.

(ii) *Receipts of Business Firms and Individuals.*—A business firm (or individual) which is subject to the Lobbying Act by reason of expenditures which it makes in attempting to influence legislation—but which has no funds to expend except those which are available in the ordinary course of operating a business not connected in any way with the influencing of legislation—will have no receipts to report, even though it does have expenditures to report.

(iii) *Receipts of Multi-purpose Organizations.*—Some organizations do not receive any funds which are to be expended solely for the purpose of attempting to influence legislation. Such organizations make such expenditures out of a general fund raised by dues, assessments, or other contributions. The percentage of the general fund which is used for such expenditures is—from the percentage of dues, assessments, or other contributions which may be considered to have been paid for that purpose. Therefore, in reporting receipts, such organizations may *specify* what that percentage is, and report their dues, assessments, and other contributions on that basis. However, each contributor of $500 or more is to be listed, regardless of whether the contribution was made *solely* for legislative purposes.

(c) IF THIS REPORT IS FOR AN AGENT OR EMPLOYEE.—(i) *In General.* In the case of many employees, all receipts will come under Items "D 8" (received for services) and "D 12" (expense money and reimbursements). In the absence of a clear statement to the contrary, it will be presumed that your employer is to reimburse you for all expenditures which you make in connection with legislative interests.

(ii) *Employer as Contributor of $500 or More.*—When your contribution from your employer (in the form of salary, fee, etc.) amounts to $500 or more, it is not necessary to report such contributions under "D 13" and "D 14," since the amount has already been reported under "D 8," and the name of the "employer" has been given under Item "3" on page 1 of this report.

D. RECEIPTS (INCLUDING CONTRIBUTIONS AND LOANS)

Fill in every blank. If the answer to any numbered item is "None," write "NONE" in the space following the number.

Receipts (other than loans)

1. $ 1,107,865.86 Dues and assessments
2. $ 369,174.23 Gifts of money or anything of value
3. $ None Printed or duplicated matter received as a gift
4. $ 2,187.54 Receipts from sale of printed or duplicated matter
5. $ None Received for services (e. g., salary, fee, etc.)
6. $ 1,479,227.63 TOTAL for this Quarter (Add items "1" through "5")
7. $ 5,031,635.72 Received during previous Quarters of calendar year
8. $ 6,510,863.35 TOTAL from Jan. 1 through this Quarter (Add "6" and "7")

Loans Received.—"The term 'contribution' includes a . . . loan . . ."—§ 302 (a).

9. $ None TOTAL now owed to others on account of loans
10. $ None Borrowed from others during this Quarter
11. $ None Repaid to others during this Quarter
12. $ None "Expense Money" and Reimbursements received this quarter.

Contributors of $500 or More (from Jan. 1 through this Quarter)

13. Have there been such contributors? Yes
Please answer "yes" or "no":
14. In the case of each contributor whose contributions (including loans) during the "period" from January 1 through the last day of this Quarter, total $500 or more:

Attach hereto plain sheets of paper, approximately the size of this page, tabulate data under the headings "Amount" and "Name and Address of Contributor"; and indicate whether the last day of the period is March 31, June 30, September 30, or December 31. Prepare such tabulation in accordance with the following example:

Amount	*Name and Address of Contributor* ("Period" from Jan. 1 through ..... 19.....)
$1,500.00	John Doe, 1431 Blank Bldg., New York, N. Y.
1,784.00	The Roe Corporation, 2411 Doe Bldg., Chicago, Ill.
$3,284.00	TOTAL

NOTE on ITEM "E."—(a) IN GENERAL. "The term 'expenditure' includes a payment, distribution, loan, advance, deposit, or gift of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure"—§ 302 (b) of the Lobbying Act.

(b) IF THIS REPORT IS FOR AN AGENT OR EMPLOYEE. In the case of many employees, all expenditures will come under telephone and telegraph (Item "E 6") and travel, food, lodging, and entertainment (Item "E 7").

E. EXPENDITURES (INCLUDING LOANS) in connection with legislative interests:

Fill in every blank. If the answer to any numbered item is "None," write "NONE" in the space following the number.

Expenditures (other than loans)

1. $ 9,000.00 Public relations and advertising services
2. $ 112,232.26 Wages, salaries, fees, commissions (other than Item "1")
3. $ None Gifts or contributions made during Quarter
4. $ 88,235.45 Printed or duplicated matter, including distribution cost
5. $ 56,116.13 Office overhead (rent, supplies, utilities, etc.)
6. $ 49,472.09 Telephone and telegraph
7. $ 27,489.71 Travel, food, lodging, and entertainment
8. $ 45,556.38 All other expenditures
9. $ 388,102.02 TOTAL for this Quarter (add "1" through "8")
10. $ 1,259,178.71 Expended during previous Quarters of calendar year
11. $ 1,647,280.73 TOTAL from January 1 through this Quarter (add "9" and "10")

Loans Made to Others.—"The term 'expenditure' includes a . . . loan . . ."—§ 302 (b).

12. $ None TOTAL now owed to person filing
13. $ None Lent to others during this Quarter
14. $ None Repayments received during this Quarter

18. *Recipients of Expenditures of $10 or More*

In the case of expenditures made during this Quarter by, or on behalf of, the person filing: Attach plain sheets of paper approximately the size of this page and tabulate data as to expenditures under the following headings: "Amount," "Date or Dates," "Name and Address of Recipient," "Purpose." Prepare such tabulation in accordance with the following example:

Amount	*Date or Dates—Name and Address of Recipient—Purpose*
$1,750.00	7-11: Roe Printing Co., 2214 Blank Ave., St. Louis, Mo.—Printing and mailing circulars on the "Marshbanks Bill."
$2,400.00	7-12, 8-12, 9-12: Britten & Bletten, 2127 Granville Bldg., Washington, D. C.—Public relations service at $800.00 per month.
$4,150.00	TOTAL

* Cost of Radio Series $14,520.25
* Cost of computer development and maintenance Campaign Monitoring $31,036.13

COMMON CAUSE

A.2. Names of agents or employees who will file reports for this quarter.

John W. Gardner
Jack T. Conway
Thomas S. Belford
Richard W. Clark
David Cohen
R. Michael Cole
Kenneth J. Guido
Patricia Keefer
Thomas J. Mader
Jack Moskowitz
Ann McBride
Ruth M. Saxe
David Tarr
Fred M. Wertheimer
David Wilken

COMMON CAUSE

C.2. Legislative Interests:

Legislative interests are in such areas as employment, education, consumer protection, freedom of information, environmental protection, war powers, tax reform, law enforcement and administration of justice, and are concerned with reordering of national priorities and Congressional reform. Common Cause has supported legislation (although not necessarily all the provisions of the bills listed) dealing with the highway trust fund (S 502), newsmen's shield, Consumer Protection Agency, no-fault auto insurance (S 354, HR 10), environmental protection (S 1104), home rule (S 1435, HR 9056), and full Congressional representation for the District of Columbia (HJ Res 429, SJ Res 76), full financial disclosure by federal officials and members of Congress (S 366), strengthened lobbyist regulations (S 511, S 1121, HR 12839), open meetings (HR 479, S 260), voter registration (S 352), campaign financing reform (HR 7612, S 3304) and Executive Privilege, cut-off of funds for the war in Indochina, tax reform and budget priorities, bilingual education, the Menominee Restoration Act, The Special Prosecutor bill, War Powers bill, The Alaska Pipeline bill, Congressional budget reform legislatio energy bill (HR 11793) and strip mining (HR 11500), freedom of information (HR 12471, S 2543), Equal Rights Amendment, Bolling recommendations, Safe Water Drinking Act, broadcast license renewal (HR 12993), land use policy act (HR 10294), lobbying Federal Energy Administration in behalf of a logging regulation, voting rights and budget/appropriations process.

COMMON CAUSE

C.3. Legislative Publications

Report From Washington
Vol. 4, No. 10
344,500 Distributed
October, 1974
Editors Press, Inc.

Report From Washington
Vol. 5, No. 1
335,700 Distributed
November, 1974
Editors Press, Inc.

Report From Washington
Vol. 5, No. 2 - 330,000 Distributed
December, 1974 - January, 1975
Editors Press, Inc.

In Common
Vol. 3, No. 12
16,000 Distributed
October 25, 1974
Clements Printing

COMMON CAUSE
D.14 Contributors of $500 or More
From October 1, 1974 to December 31, 1974

Amount	Name and Address
$ 500.00	Reverend and Mrs. C. Frederick Buechner Pawlet, Vermont 05761
500.00	Mrs. Alexander Calder 37205 Sache France
515.00	Jack T. Conway 1307 Fourth Street, S. W. Washington, D. C. 20024
500.00	Mrs. Nancy Larrick Crosby Box 20, R.R. 4 Quakertown, Pennsylvania 18951
1,000.00	Mrs. G. T. Crossland Harbour House 2295 South Ocean Boulevard Palm Beach, Florida 33480
1,000.00	Mrs. M. W. Davis 21 Autumn Lane Amherst, Massachusetts 01002
2,000.00	Miss Elizabeth L. Dayton 410 West Ferndale Road Wayzata, Minnesota 55391
1,000.00	Mr. Leo Fields Zale Corporation 3000 Diamond Park Dallas, Texas 75247
500.00	Mr. Harry W. Havemeyer 350 Fifth Avenue New York, New York 10001
500.00	Mr. Samuel C. Johnson 4815 Lighthouse Drive Racine, Wisconsin 53402

Amount	Name and Address
$6,500.00	Mr. and Mrs. Kenneth A. Jones Box 45 West Tisbury Martha's Vineyard, Massachusetts
3,250.00	Mr. Lawrence D. Jones 1154 Godfrey Lane Schenectady, New York 12305
1,000.00	Mr. Donald Klopfer 575 Park Avenue New York, New York 10021
1,000.00	Mr. Donald H. McGannon Westinghouse Electric Corporation Broadcasting, Learning and Leisure Time 90 Park Avenue New York, New York 10018
500.00	Mrs. Clara L. Nothhacksberger 8 Rue Simon Le Franc Paris, France
500.00	Mrs. William B. Phillips 3419 36th Street, N. W. Washington, D. C. 20016
1,000.00	Progressive Industries Tru-Foto Co. 2030 Kuntz Road Dayton, Ohio 43404
1,000.00	Mr. Richard Salomon 730 Fifth Avenue New York, New York 10019
1,000.00	Mr. Thomas J. Watson, Jr. Old Orchard Road Armonk, New York 10504
500.00	Mr. David J. Winton 5217 Wayzata Boulevard Minneapolis, Minnesota 55416
1,000.00	Mr. David Rockefeller 30 Rockefeller Plaza New York, New York 10020

COMMON CAUSE

Amount	Name and Address
$ 500.00	Frederic G. Worden, M.D. 45 Hilltop Road Weston, Massachusetts 02193
1,000.00	Mrs. Frederic G. Worden 45 Hilltop Road Weston, Massachusetts 02193
3,500.00	Mrs. Charlotte S. Wyman Postfahr 83 Gstaad, 3780 Switzerland
1,000.00	Ms. Katherine M. Dayton 1916 Irving Avenue South Minneapolis, Minnesota 55403
3,000.00	Mr. Arthur Temple, Jr. P. O. Drawer N Diboll, Texas 75941
500.00	Mrs. Arthur Temple Box 804 Texarkana, Texas 75501

COMMON CAUSE

E.15 Recipients of Expenditures of $10 or More
From October 1, 1974 to December 31, 1974

Amount	Date	Address and Purpose
$ 50.17	December, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Printing News Release, November 27, 1974 - Mailed Only To K List
92.23	December, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Addressograph for the month of November, 1974
549.19	November, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Mailing November Newsletter (2,609 pieces)
62.75	November, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Mailing 1 page, 450 copies of Notice to the Press, November 18, 1974 - Mailed to K List
628.35	November, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Printing Common Cause Briefs. Vol. 4, No. 10 October, 1974
313.94	November, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Addressograph for the month of October, 1974
64.50	October, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Printing 1 page, 450 copies -- News Release of October 21, 1974 "Notice to the Press"

Amount	Date	Address and Purpose
$ 1,605.10	October, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Printing and Mailing 13 pages, 3,600 copies -- News Release "Text of Speech by John Gardner Before the Washington Press Club
793.46	October, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Printing and Mailing 10 pages, 3,000 copies -- News Release "Democrats Dump Major Reform of House Committee System to Adopt 'Band-Aid' Plan that Makes No Basic Changes"
31.53	October, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Printing 1 page, 500 copies -- News Release "Statement by Common Cause on Passage of the Campaign Finance Bill"
32.84	October, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Printing 1 page, 600 copies -- News Release "Statement by Common Cause on the Election Campaign Reform Conference Bill"
194.17	October, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Addressograph for the month of September, 1974
10.20	October, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Addressograph for the month of September, 1974
194.83	October, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Printing 2 pages, 1,850 copies -- News Release for September 23, 1974 "Common Cause Applauds FEA for Instituting Lobbying Regulation"

mount	Date	Address and Purpose
$ 88.62	October, 1974	Bowman Service Corporation 1825 K Street, N. W. Washington, D. C. 20006 Printing 1 page, 2,600 copies -- News Release "Senators' and Representatives' Votes on Common Cause Issues Reported"
2,500.00	October, 1974	Georgianna Rathbun 2030 M Street, N. W. Washington, D. C. 20036 Edit Newsletter and Research
2,500.00	November, 1974	Georgianna Rathbun 2030 M Street, N. W. Washington, D. C. 20036 Edit Newsletter and Research
2,500.00	December, 1974	Georgianna Rathbun 2030 M Street, N. W. Washington, D. C. 20036 Edit Newsletter and Research
1,750.00	October, 1974	David Tarr 2030 M Street, N. W. Washington, D. C. Edit Newsletter and Research
1,750.00	November, 1974	David Tarr 2030 M Street, N. W. Washington, D. C. 20036 Edit Newsletter and Research
1,750.00	December, 1974	David Tarr 2030 M Street, N. W. Washington, D. C. 20036 Edit Newsletter and Research
2,509.38	October, 1974	John W. Gardner 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
1,218.77	November, 1974	John W. Gardner 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
1,181.59	December, 1974	John W. Gardner 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
1,515.11	October, 1974	Jack T. Conway 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbusement

mount	Date	Address and Purpose
$ 937.50	November, 1974	Jack T. Conway 2030 M Street, N. W. Washington, D. C. 20036 Compensation
937.50	December, 1974	Jack T. Conway 2030 M Street, N. W. Washington, D. C. 20036 Compensation
766.77	October, 1974	Thomas Belford 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
437.50	November, 1974	Thomas Belford 2030 M Street, N. W. Washington, D. C. 20036 Compensation
437.50	December, 1974	Thomas Belford 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,893.07	October, 1974	Richard W. Clark 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
2,189.87	November, 1974	Richard W. Clark 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
1,750.00	December, 1974	Richard W. Clark 2030 M Street, N. W. Washington, D. C. 20036 Compensation
2,707.46	October, 1974	David Cohen 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
3,154.57	November, 1974	David Cohen 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
2,375.00	December, 1974	David Cohen 2030 M Street, N. W. Washington, D. C. 20036 Compensation

Amount	Date	Address and Purpose
$ 1,928.23	October, 1974	R. Michael Cole 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
1,750.00	November, 1974	R. Michael Cole 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,811.12	December, 1974	R. Michael Cole 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
241.67	October, 1974	Kenneth J. Guido 2030 M Street, N. W. Washington, D. C. 20036 Compensation
241.67	November, 1974	Kenneth J. Guido 2030 M Street, N. W. Washington, D. C. 20036 Compensation
353.05	December, 1974	Kenneth J. Guido 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,375.13	October, 1974	Patricia Keefer 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
875.00	November, 1974	Patricia Keefer 2030 M Street, N. W. Washington, D. C. 20036 Compensation
875.00	December, 1974	Patricia Keefer 2030 M Street, N. W. Washington, D. C. 20036 Compensation
947.44	October, 1974	Thomas Mader 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement

Amount	Date	Address and Purpose
$ 1,435.21	November, 1974	Thomas Mader 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
1,011.77	December, 1974	Thomas Mader 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
3,059.60	October, 1974	Jack Moskowitz 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
2,759.75	November, 1974	Jack Moskowitz 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
2,700.00	December, 1974	Jack Moskowitz 2030 M Street, N. W. Washington, D. C. 20036 Compensation
271.31	October, 1974	Ruth M. Saxe 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
116.67	November, 1974	Ruth M. Saxe 2030 M Street, N. W. Washington, D. C. 20036 Compensation
116.67	December, 1974	Ruth M. Saxe 2030 M Street, N. W. Washington, D. C. 20036 Compensation
2,908.57	October, 1974	Fred M. Wertheimer 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
2,750.00	November, 1974	Fred M. Wertheimer 2030 M Street, N. W. Washington, D. C. 20036 Compensation

Amount	Date	Address and Purpose
$ 2,750.00	December, 1974	Fred M. Wertheimer 2030 M Street, N. W. Washington, D. C. 20036 Compensation
500.00	October, 1974	Dorothy Cecelski 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
500.00	November, 1974	Dorothy Cecelski 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
500.00	December, 1974	Dorothy Cecelski 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
666.67	October, 1974	Martha Knouss 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
666.67	November, 1974	Martha Knouss 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
666.67	December, 1974	Martha Knouss 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
450.00	October, 1974	Ellen Malcolm 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
450.00	November, 1974	Ellen Malcolm 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
450.00	December, 1974	Ellen Malcolm 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
450.00	October, 1974	Brian Buniva 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network

Amount	Date	Address and Purpose
$ 450.00	November, 1974	Brian Buniva 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
437.50	October, 1974	Helen Levin 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
437.50	November, 1974	Helen Levin 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
450.00	October, 1974	Robert O'Leary 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
450.00	November, 1974	Robert O'Leary 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
450.00	December, 1974	Robert O'Leary 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
450.00	October, 1974	Eleanor Rosenthal 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Radio Series
450.00	November, 1974	Eleanor Rosenthal 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Radio Series
416.67	October, 1974	Mimi Conklin 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
416.67	November, 1974	Mimi Conklin 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
416.67	December, 1974	Mimi Conklin 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network

Amount	Date	Address and Purpose
$ 450.00	October, 1974	Betsy Sherman 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
450.00	November, 1974	Betsy Sherman 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
450.00	December, 1974	Betsy Sherman 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
666.67	October, 1974	Wendy Wolff 2030 M Street, N. W. Washington, D. C. 20036 Compensation
666.67	November, 1974	Wendy Wolff 2030 M Street, N. W. Washington, D. C. 20036 Compensation
666.67	December, 1974	Wendy Wolff 2030 M Street, N. W. Washington, D. C. 20036 Compensation
2,100.00	October, 1974	Barbara J. Williams 3726 7th Street, N. E. Washington, D. C. Consultant on Organizing and Legislative Issues
1,050.00	November, 1974	Barbara J. Williams 3726 7th Street, N. E. Washington, D. C. Consultant on Organizing and Legislative Issues
416.67	October, 1974	Fran Wells 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
416.67	November, 1974	Fran Wells 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
474.69	December, 1974	Fran Wells 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network

Amount	Date	Address and Purpose
$ 416.67	October, 1974	Peggy Fitzgerald-Bare 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
416.67	November, 1974	Peggy Fitzgerald-Bare 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
416.67	December, 1974	Peggy Fitzgerald-Bare 2030 M Street, N. W. Washington, D. C. 20036 Compensation - Network
541.67	October, 1974	Julie Atkins 2030 M Street, N. W. Washington, D. C. 20036 Compensation
541.67	November, 1974	Julie Atkins 2030 M Street, N. W. Washington, D. C. 20036 Compensation
541.67	December, 1974	Julie Atkins 2030 M Street, N. W. Washington, D. C. 20036 Compensation
362.50	October, 1974	Michael Keating 2030 M Street, N. W. Washington, D. C. 20036 Compensation
362.50	November, 1974	Michael Keating 2030 M Street, N. W. Washington, D. C. 20036 Compensation
362.50	December, 1974	Michael Keating 2030 M Street, N. W. Washington, D. C. 20036 Compensation
416.67	October, 1974	Mary Mozingo 2030 M Street, N. W. Washington, D. C. 20036 Compensation
416.67	November, 1974	Mary Mozingo 2030 M Street, N. W. Washington, D. C. 20036 Compensation
416.67	December, 1974	Mary Mozingo 2030 M Street, N. W. Washington, D. C. 20036 Compensation

Amount	Date	Address and Purpose
$ 1,083.34	October, 1974	Neil Upmeyer 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,083.34	November, 1974	Neil Upmeyer 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,083.34	December, 1974	Neil Upmeyer 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,666.67	October, 1974	Thomas Mathews 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,666.67	November, 1974	Thomas Mathews 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,666.67	December, 1974	Thomas Mathews 2030 M Street, N. W. Washington, D. C. 20036 Compensation
666.67	October, 1974	Franci Eisenberg 2030 M Street, N. W. Washington, D. C. 20036 Compensation
666.67	November, 1974	Franci Eisenberg 2030 M Street, N. W. Washington, D. C. 20036 Compensation
666.67	December, 1974	Franci Eisenberg 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,083.34	October, 1974	John J. Conway 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,083.34	November, 1974	John J. Conway 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,083.34	December, 1974	John J. Conway 2030 M Street, N. W. Washington, D. C. 20036 Compensation

Amount	Date	Address and Purpose
$ 625.00	October, 1974	Andrew Kneier 2030 M Street, N. W. Washington, D. C. 20036 Compensation
625.00	November, 1974	Andrew Kneier 2030 M Street, N. W. Washington, D. C. 20036 Compensation
625.00	December, 1974	Andrew Kneier 2030 M Street, N. W. Washington, D. C. 20036 Compensation
250.00	October, 1974	Baxter Wood 2030 M Street, N. W. Washington, D. C. 20036 Compensation
125.00	November, 1974	Baxter Wood 2030 M Street, N. W. Washington, D. C. 20036 Compensation
250.00	October, 1974	Joyce Applewhite 2030 M Street, N. W. Washington, D. C. 20036 Compensation
125.00	November, 1974	Joyce Applewhite 2030 M Street, N. W. Washington, D. C. 20036 Compensation
250.00	October, 1974	Jack Fieldhouse 2030 M Street, N. W. Washington, D. C. 20036 Compensation
416.67	October, 1974	Laura Lawson 2030 M Street, N. W. Washington, D. C. 20036 Compensation
416.67	November, 1974	Laura Lawson 2030 M Street, N. W. Washington, D. C. 20036 Compensation
416.67	December, 1974	Laura Lawson 2030 M Street, N. W. Washington, D. C. 20036 Compensation

Amount	Date	Address and Purpose
$ 500.00	October, 1974	Susan Plissner 2030 M Street, N. W. Washington, D. C. 20036 Compensation
500.00	November, 1974	Susan Plissner 2030 M Street, N. W. Washington, D. C. 20036 Compensation
500.00	December, 1974	Susan Plissner 2030 M Street, N. W. Washington, D. C. 20036 Compensation
916.67	October, 1974	John Pincetich 2030 M Street, N. W. Washington, D. C. 20036 Compensation
916.67	November, 1974	John Pincetich 2030 M Street, N. W. Washington, D. C. 20036 Compensation
916.67	December, 1974	John Pincetich 2030 M Street, N. W. Washington, D. C. 20036 Compensation
750.00	October, 1974	James May 2030 M Street, N. W. Washington, D. C. 20036 Compensation
750.00	November, 1974	James May 2030 M Street, N. W. Washington, D. C. 20036 Compensation
750.00	December, 1974	James May 2030 M Street, N. W. Washington, D. C. 20036 Compensation
833.33	October, 1974	Arlene Alligood 2030 M Street, N. W. Washington, D. C. 20036 Compensation

Amount	Date	Address and Purpose
$ 6,287.57	October, 1974	Editors Press, Inc. 6041 33rd Avenue Hyattsville, Maryland Printing 344,500 copies of 4 pages, Vol. 4, No. 10 Newsletter
10,969.90	November, 1974	Editors Press, Inc. 6041 33rd Avenue Hyattsville, Maryland Printing 335,700 copies of 8 pages, Vol. 5, No. 1 Newsletter
10,500.00	December, 1974	Editors Press, Inc. 6041 33rd Avenue Hyattsville, Maryland Printing 330,000 copies of 8 pages, Vol. 5, No. 2 Newsletter
997.50	October, 1974	Clements Printing Company 1365 H Street, N. E. Washington, D. C. Printing 16,000 copies of 8 pages, Vol. 3, No. 12 Special Newsletter
2,128.60	October, 1974	American Mailing Company 310 Swann Avenue Alexandria, Virginia Affixing labels and mailing Vol. 4, No. 10 Newsletter
2,470.45	November, 1974	American Mailing Company 310 Swann Avenue Alexandria, Virginia Affixing labels and mailing Vol. 5, No. 1 Newsletter
2,450.00	December, 1974	American Mailing Company 310 Swann Avenue Alexandria, Virginia Affixing labels and mailing Vol. 5, No. 2 Newsletter
958.50	October, 1974	Kaufmann Graphics, Inc. 1110 Okie Street, N. E. Washington, D. C. Mailing list maintenance
5,589.92	October, 1974	U. S. Postmaster Washington, D. C. Postage for mailing Vol. 4, No. 10 Newsletter
5,533.99	November, 1974	U. S. Postmaster Washington, D. C. Postage for mailing Vol. 5, No. 1 Newsletter

Amount	Date	Address and Purpose
$ 5,432.20	December, 1974	U. S. Postmaster Washington, D. C. Postage for mailing Vol. 5, No. 2 Newsletter
1,425.50	October, 1974	U. S. Postmaster Washington, D. C. Postage for mailing Vol. 3, No. 12 Special Newsletter
1,171.81	October, 1974	Xerox Corporation P. O. Box 1794 William Penn Annex Philadelphia, Pennsylvania Developing Microfilm
2,255.33	November, 1974	Xerox Corporation P. O. Box 1794 William Penn Annex Philadelphia, Pennsylvania Developing Microfilm
2,451.81	December, 1974	Xerox Corporation P. O. Box 1794 William Penn Annex Philadelphia, Pennsylvania Developing Microfilm
18,411.76	November, 1974	Chesapeake & Potomac Telephone Co. Washington, D. C.
18,608.09	October, 1974	Chesapeake & Potomac Telephone Co. Washington, D. C.
10,989.84	December, 1974	Chesapeake & Potomac Telephone Co. Washington, D. C.
9,804.08	October, 1974	Maurer, Fleisher, Zon & Associates 1120 Connecticut Avenue, N. W. Washington, D. C. Public Relations - Radio Series
10,040.74	November, 1974	Maurer, Fleisher, Zon & Associates 1120 Connecticut Avenue, N. W. Washington, D. C. Public Relations - Radio Series
9,546.30	December, 1974	Maurer, Fleisher, Zon & Associates 1120 Connecticut Avenue, N. W. Washington, D. C. Public Relations - Radio Series
77.96	October, 1974	Western Union 7916 Westpark Drive McLean, Virginia
11.92	November, 1974	Western Union 7916 Westpark Drive McLean, Virginia
1,359.81	December, 1974	Western Union 7916 Westpark Drive McLean, Virginia

Amount	Date	Address and Purpose
$ 3,977.20	October, 1974	The Print Shop 2022 M Street, N. W. Washington, D. C. 20036 Printing for Legislative Activities
692.77	November, 1974	The Print Shop 2022 M Street, N. W. Washington, D. C. 20036 Printing for Legislative Activities
497.25	December, 1974	The Print Shop 2022 M Street, N. W. Washington, D. C. 20036 Printing for Legislative Activities
1,241.91	October, 1974	Ann McBride 2030 M Street, N. W. Washington, D. C. 20036 Compensation and Expense Reimbursement
1,083.34	November, 1974	Ann McBride 2030 M Street, N. W. Washington, D. C. 20036 Compensation
1,083.34	December, 1974	Ann McBride 2030 M Street, N. W. Washington, D. C. Compensation
8,571.67	October, 1974	Center for Management Services, Inc. 2030 M Street, N. W. Washington, D. C. Program Development and Maintenance of Campaign Monitoring File
5,729.20	November, 1974	Center for Management Services, Inc. 2030 M Street, N. W. Washington, D. C. Program Development and Maintenance of Campaign Monitoring File
16,735.26	December, 1974	Center for Management Services, Inc. 2030 M Street, N. W. Washington, D. C. Program Development and Maintenance of Campaign Monitoring File
15.00	October, 1974	Fresno Hilton 1055 Van Ness Avenue Fresno, California 93721 Rental of meeting room
75.00	October, 1974	Waterloo Community School District Waterloo, Iowa 50702 Rental of auditorium
125.00	October, 1974	Women's Club of Raleigh Raleigh, North Carolina Rental of auditorium

Amount	Date	Address and Purpose
$ 124.00	October, 1974	Norwalk Board of Education 105 Main Street Norwalk, Connecticut Rental of auditorium
20.00	October, 1974	Jean Ankeney 2039 Huntington Road Shaker Heights, Ohio Postage
150.00	October, 1974	Temple Bethel 2815 North Flagler Drive West Palm Beach, Florida Rental of hall
25.00	November, 1974	Eileen Coffee 221-10 67 Avenue Bayside, New York 11364 Rental of hall
53.58	November, 1974	Dartmouth College P. O. Box 7 Hanover, New Hampshire 03755 Rental of auditorium
115.95	November, 1974	Tavern Motor Inn Montpelier, Vermont 05602 Rental of meeting room
30.00	November, 1974	Drew University Madison, New Jersey 07940 Rental of gym
12.00	November, 1974	Robert Walden Cogeshall Shaggy Acres Ballentine, South Carolina Payment for services at Common Cause meeting
13.26	October, 1974	Lois Holt 2077 Alameda Street Ventura, California 93001 Expense Reimbursement for printing
213.06	October, 1974	Coast Blueprint 1733 West Thorn Street San Diego, California 92101 Printing tickets and other materials
152.90	October, 1974	Ann McBride 2030 M Street, N. W. Washington, D. C. Reimbursement for printing

Amount	Date	Address and Purpose
$ 17.08	October, 1974	Copy Center West 201 Front Street Berea, Ohio 44017 Xerox copies
29.58	October, 1974	Louis Adams 465 Western Avenue Albany, New York Reimbursement of expenses
32.45	November, 1974	Louis Adams 465 Western Avenue Albany, New York Postage
299.12	October, 1974	Robert Smith 2030 M Street, N. W. Washington, D. C. Expense Reimbursement
81.52	November, 1974	Robert Smith 2030 M Street, N. W. Washington, D. C. Expense Reimbursement
203.50	October, 1974	Jack Fieldhouse 2030 M Street, N. W. Washington, D. C. Expense Reimbursement
141.33	October, 1974	Andrew Kneier 2030 M Street, N. W. Washington, D. C. Expense Reimbursement
15.75	October, 1974	John J. Conway 2030 M Street, N. W. Washington, D. C. Expense Reimbursement
69.53	October, 1974	Michael Dowell 368 North Main Street Hudson, Ohio 44236 Expense Reimbursement
75.90	November, 1974	Bruce Laumeister Phillipsburg, New Jersey 08865 Travel expense reimbursement
403.02	October, 1974	Bruce Laumeister Phillipsburg, New Jersey 08865 Travel expense reimbursement

Amount	Date	Address and Purpose
$ 64.00	November, 1974	Bea Selin 1011 Allowez Marquette, Michigan 49855 Reimbursement for room and postage
24.75	November, 1974	Frederick Briefer 2500 Lee Road Winter Park, Florida Reimbursement of expenses
665.76	November, 1974	Harold Willens 1122 Maple Avenue Los Angeles, California 90015 Travel expense reimbursement
226.60	October, 1974	Sondra J. Byrnes 29 Union Park Boston, Massachusetts 02116 Printing of 5,000 posters
344.30	October, 1974	Asman Custom Photo Service 926 Pennsylvania Avenue, S. E. Washington, D. C. 20003 Photograph Prints
84.00	October, 1974	Thor Associates Box 357 Lothian, Maryland 20820 Typesetting
72.78	October, 1974	Berea Printing Co. P. O. Box 274 Berea, Ohio 44017 Printing 5,000 flyers
68.59	October, 1974	Signi Falk 1846 C Avenue, N. E. Cedar Rapids, Iowa Reimbursement of expenses
100.00	October, 1974	John Koliha P. O. Box 372 Berea, Ohio 44017 Photography
175.00	October, 1974	City Treasury 202 C Street San Diego, California 92101 Purchase of use permit
20.00	October, 1974	Wendell Covalt 1012 Kensington Lafayette, Indiana 47905 Rental of auditorium

.mount	Date	Address and Purpose
$ 72.46	October, 1974	Perry Crothers 1986 Berkshire Drive Thousand Oaks, California 91360 Postage, Printing, Typing
124.74	December, 1974	The Kansas City Star 1729 Grand Avenue Kansas City, Missouri 64108 Advertisement of meeting
95.00	October, 1974	The First Unitarian Church 1187 Franklin Street San Francisco, California 94109 Rental of hall
40.00	October, 1974	Franklin Park Mall 700 Franklin Park Toledo, Ohio 43623 Rental of community room
48.00	October, 1974	Steve Hummel 4628 N. E. Cara lane Kansas City, Missouri 64116 Security at auditorium
40.00	October, 1974	Hamsburg-Hershey-Carlisle Stage Employees Local No. 98 P. O. Box 731 Harrisburg, Pennsylvania 17108 Services of stage employees
45.00	October, 1974	Sioux City Community School District 1221 Pierce Street Sioux City, Iowa 51105 Rental of auditorium
303.49	October, 1974	James McAleer 608 Hospital Trust Building Providence, Rhode Island 02903 Rental of auditorium
37.50	October, 1974	Elizabeth Milbrant 210 South Glebe Arlington, Virginia 22204 Graphics paste-up artist
40.00	October, 1974	Larry Mulligan McKay Towers Grand Rapids, Michigan Rental of auditorium
150.00	October, 1974	William Bartley 1808 Lawyers Building Pittsburgh, Pennsylvania 15219 Rental of auditorium

Amount	Date	Address and Purpose
$ 15.00	October, 1974	Reverend Fred Browneist, III 36 Norwood Road Charleston, West Virginia Rental of auditorium
584.30	October, 1974	The Bellevue Stratford Philadelphia, Pennsylvania Rental of various meeting rooms
56.00	October, 1974	William Brown 1017 Washington Street Kansas City, Missouri 64105 Services rendered at meeting
56.00	October, 1974	Al Krikorian 1017 Washington Street Kansas City, Missouri 64105 Services rendered at meeting
444.04	October, 1974	Wesley Watkins Box 504 Greenville, Mississippi 38701 Reimbursement of travel expenses
159.79	October, 1974	Betty Kitzman Meadows Glen Road Ames, Iowa 50010 Reimbursement of travel expenses
76.20	October, 1974	James Banner Harvard University Cambridge, Massachusetts 02138 Reimbursement of travel expenses
277.30	October, 1974	A. Lee Sanders 810 Polomous #55 San Mateo, California Reimbursement of travel expenses
17.29	October, 1974	William Jakobi 1946 Tigertail Avenue Miami, Florida 33133 Printing of press release
153.27	October, 1974	Cal-Mart Travel Service 110 East 9th Street Los Angeles, California 90015 Purchase of airline ticket
90.63	October, 1974	Herbert Miller 412 5th Street, N. W. Washington, D. C. Reimbursement for travel expenses
45.80	October, 1974	Michael Walsh 3104 4th Avenue San Diego, California Reimbursement for travel expenses
16.97	October, 1974	Elis Williams 2030 M Street, N. W. Washington, D. C. Expense Reimbursement

Amount	Date	Address and Purpose
$ 21.33	December, 1974	Todd & Suzi Areson 750 Colony Court Niles, Michigan 49120 Reimbursement of expenses
12.71	December, 1974	Diane Neidle 2400 Elba Court Alexandria, Virginia 22306 Telephone calls
13.20	December, 1974	Daniel J. Ryan 4 Pelham Parkway North Providence, Rhode Island Reimbursement of expenses
31.48	December, 1974	Dan Swillinger 1659 North High Street Columbus, Ohio 43210 Reimbursement of expenses
27.90	December, 1974	University of Washington Seattle, Washington 98195 Rental of hall
105.59	November, 1974	Colonel W. Kelley 429 Ocean Shore Boulevard Ormond Beach, Florida Reimbursement of travel expenses
93.04	November, 1974	Kenneth Smith 2030 M Street, N. W. Washington, D. C. Expense Reimbursement
483.00	November, 1974	Congressional Quarterly Washington, D. C. Subscription to quarterly
36.35	October, 1974	Dorothy Cecelski 2030 M Street, N. W. Washington, D. C. Expense Reimbursement
350.39	October, 1974	James May 2030 M Street, N. W. Washington, D. C. Expense Reimbursement
253.62	October, 1974	Robert O'Leary 2030 M Street, N. W. Washington, D. C. Expense Reimbursement
66.93	October, 1974	Betsy Sherman 2030 M Street, N. W. Washington, D. C. Expense Reimbursement

Amount	Date	Address and Purpose
$ 52.45	November, 1974	Jasper & Smith Mailing Service 1435 Imperial Avenue San Diego, California 92112 Postage and mailing of invitations
40.00	November, 1974	Phoebe Bender 6 Lower Sage Hill Lane Albany, New York 12204 Rental of hall
45.60	November, 1974	Thomas Hotopp 66 Chequers Circle Big Flats, New York 14814 Reimbursement of expenses
15.00	November, 1974	Wayne Eberhard 6062 Parkview Drive, S. E. Grand Rapids, Michigan Rental of meeting room
66.06	December, 1974	Paul Bowman 2 West 40th Street Kansas City, Missouri 64111 Reimbursement of expenses
40.00	December, 1974	National Information Center on Political Finance 1414 22nd Street, N. W. Washington, D. C. Purchase of microfilm
193.55	November, 1974	National Information Center on Political Finance 1414 22nd Street, N. W. Washington, D. C. Purchase of microfilm
137.89	October, 1974	National Information Center on Political Finance 1414 22nd Street, N. W. Washington, D. C. Purchase of microfilm
47.21	November, 1974	Sidney Garvais 451 Park Avenue Windsor, Connecticut 06095 Reimbursement of travel expenses
831.43	December, 1974	Eastern Airlines Miami, Florida 33148 Purchase of airline tickets
416.56	November, 1974	Easter Airlines Miami, Florida 33148 Purchase of airline tickets
75.00	October, 1974	Thomsen's Audio 1 Hermanny Court Norwalk, Connecticut Rental of public address system

Amount	Date	Address and Purpose
$ 35.00	October, 1974	John T. Ostheimer Agency Norwalk, Connecticut Insurance Coverage on meeting
33.58	October, 1974	Robert Troutman 320 Susan Lane Paducah, Kentucky 42001 Reimbursement of expenses
109.57	October, 1974	Ramada Inn 7007 Grover Omaha, Nebraska 68114 Rental of meeting room
10.00	October, 1974	University of Minnesota Duluth, Minnesota 55812 Rental of auditorium
10.13	November, 1974	Bob Vanik 7417 Sunnyside North Seattle, Washington 98103 Office supplies
100.00	October, 1974	Cleveland Convention Center & Stadium Cleveland, Ohio Rental of auditorium
45.00	October, 1974	Office of Registrar George Mason University Fairfax, Virginia 22030 Rental of auditorium
164.00	October, 1974	Ohio State University Columbus, Ohio Rental of auditorium
106.96	October, 1974	Claudette Einhorn 5212 North Capitol Indianapolis, Indiana 46208 Reimbursement of travel expenses
7,488.79	October, 1974	Sisk Mailing Service 1526 14th Street, N. W. Washington, D. C. Affixing labels and postage for mailing invitations and other materials
9,822.04	October, 1974	American Security Corporation 15th and New York Avenues Washington, D. C. Purchase of airline tickets
749.67	December, 1974	American Security Corporation 15th and New York Avenues Washington, D. C. Purchase of airline tickets
1,299.30	October, 1974	In House Cost for Printing Legislative Oriented Materials
84.00	November, 1974	In House Cost for Printing Legislative Oriented Materials

Amount	Date	Address and Purpose
$ 117.05	October, 1974	Brian Puniva 2030 M Street, N. W. Washington, D. C. Expense Reimbursement
53.10	October, 1974	Martha Knouse 2030 M Street, N. W. Washington, D. C. Expense Reimbursement
66.06	October, 1974	Diane Heidle 2400 Elba Court Alexandria, Virginia Reimbursement of travel expenses
306.96	October, 1974	Nan Waterman 1111 Oakland Drive Muscatine, Iowa Reimbursement of travel expenses
269.27	December, 1974	Susan Herter 1213 Monroe Street, N. E. Albuquerque, New Mexico Travel expense reimbursement
263.54	October, 1974	Susan Herter 1213 Monroe Street, N. E. Albuquerque, New Mexico Travel expense reimbursement
61.40	December, 1974	Gary Sirbu 2137 Bracmar Drive Oakland, California Reimbursement of travel expenses
15.20	December, 1974	Valley River Inn Valley River Center Eugene, Oregon Rental of meeting room
148.82	December, 1974	William Bartley 1800 Lawyers Building Pittsburgh, Pennsylvania Reimbursement of expenses
324.52	December, 1974	New York Princeton Club New York, New York Rental of meeting room
558.00	November, 1974	Thor Associates, Inc. Box 357 Lothian, Maryland 20870 Typesetting

Office overhead is computed at 50% of wages, salaries and fees.

Appendix C

THE CONSTITUTIONALITY OF AN IMPROVED FEDERAL LOBBYIST REGISTRATION STATUTE

Prepared by:

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Director of Litigation

May 21, 1974

The proposals that have been made for improvement in the Federal Regulation of Lobbying Act of 1946 require the disclosure of the financing of activities of organizations and individuals who receive or expend substantial sums of money to influence legislative or executive action, either by direct communication or by solicitation of others to engage in such efforts. Since these proposals are limited to organizations and individuals who expend substantial sums of money and are restricted to traditional lobbying activity, they are constitutional.

The United States Supreme Court is careful to preserve the right to speak and petition one's government. Nevertheless, when there is a compelling interest in requiring disclosure of certain matters, as there is in the area of lobbying, the court will sustain the legislation even where it has an incidental deterrent effect on the protected activity.

I. THE CONSTITUTIONAL STANDARD

As Justice Brennan observed in Garrison v. State of Louisiana, 379 U.S. 69, 74-75 (1964), "speech concerning public affairs is more than self-expression; it is the essence of self-government." The First and Fourteenth Amendments embody the "profound national commitment to the

principle that debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). See also Mills v. Alabama, 384 U.S. 214, 217-218 (1966). Accordingly, the United States Supreme Court has been particularly protective of First Amendment freedoms, and has extended the protection to more than sheer verbal or printed expression. See e.g., West Virginia Board of Education v. Barrette, 319 U.S. 624 (1943) (right to refuse to salute flag); NAACP v. Button, 371 U.S. 415 (1963) (right to solicit legal business). It is still the case, however, that the constitutionality of regulations relating to First Amendment rights varies with their mode of expression, and that usually the non-verbal exercise of such rights, particularly when joined with acts which are not necessarily communicative, is more susceptible to regulation than is pure speech. See Communist Party v. Subversive Activities Control Board, 367 U.S. 1, 173-174 (1967) (Douglas, J. dissenting, quoted infra); Cox v. Louisiana, 379 U.S. 536, 555 (1965); Cameron v. Johnson, 390 U.S. 611, 617 (1968); United States v. O'Brien, 391 U.S. 367, 376 (1968); California v. LaRue, ___ U.S. ___, 93 S.Ct. 390, 396 (1972). As the United States Supreme Court stated in Konigsburg v. State

Bar of California, 366 U.S. 36, 50-51 (1961):

> ... [G]eneral regulatory statutes, not intended to control the content of speech but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendment forbade Congress or the States to pass, when they have been found justified by subordinating valid government interests ...

In such cases, the United States Supreme Court has determined that "a law which primarily regulates conduct but which might also indirectly affect speech can be upheld if the effect on speech is minor in relation to the need for control of the conduct." Barenblatt v. United States, 360 U.S. 109, 141-42 (1959)(Black, J. dissenting on other grounds). Accordingly, the United States Supreme Court has evolved a three-part test to determine whether disclosure requirements which allegedly infringe upon First Amendment rights are unconstitutional:

First, it must be shown that disclosure will deter the class of persons to be protected from exercising their First Amendment rights. NAACP v. Alabama, 357 U.S. 449, 462-63 (1958); Gibson v. Florida Legislative Investigation Commission, 372 U.S. 539, 546 (1963); Laird v. Tatum, 408 U.S. 1, 13 (1972).

If it can be proven that disclosure has had a chilling effect on First Amendment freedoms, the United States Supreme Court then requires a determination of: (1) whether there is a substantial relation between the information sought and a subject of overriding and compelling state interest, NAACP

v. Alabama, supra, at 462-63; Gibson v. Florida Legislative Investigation Commission, supra at 546; and (2) whether the means chosen to achieve the overriding and compelling interest are precise, have as narrow an impact as possible, are not vague, overbroad or indiscriminate in their sweep, and no less drastic means exist which might alternatively be used to implement the state interest. Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967); Aptheker v. Secretary of State, 378 U.S. 500, 512; Shelton v. Tucker, 364 U.S. 479, 488 (1960); NAACP v. Button, supra.

There is no hard evidence to suggest that lobbying disclosure statutes chill the exercise of First Amendment rights. Nevertheless, even if there were, the disclosure of the receipt and expenditure of substantial sums of money to influence governmental actions is substantially related to the overriding and compelling state interests in removing the corrupting influences of money in politics and restoring confidence in the integrity of the political process. Additionally, since the proposals under consideration only require disclosure by those organizations which receive or spend substantial sums of money to influence political decisions, they are not overly broad but are precisely drawn.

II. THERE IS A COMPELLING STATE INTEREST IN REQUIRING THE DISCLOSURE OF MONEY SPENT TO INFLUENCE PUBLIC DECISIONS

The underlying conditions which require improvement in the existing Federal lobbyist registration law have been created by the changes which have taken place in the political process in recent years. The primary change has been the growth of the importance of private money in the political process and the relationship between lobbyists and governmental actions.

The function of lobbyists has become such an important part of the process of setting public policy that the labels the "Third House" and the "Fifth Estate" have shifted from rhetoric to fact. Lobbying not only pushes and pulls public policy makers, but the complexity of modern society often makes lobbying useful to them. Lobbyists serve for legislators as lawyers do for courts--assembling information and presenting the merits of a certain interest.

> ... the lobbyist performs functions which are useful to the legislative process. His role in providing information to members of a legislature is especially important in this era of complex and technical legislation. The lobbyist advises the legislator regarding both the meaning and impact of proposed legislation. Equally important is his representative function. Lobbyists are the legislative spokesmen for special interests who would not otherwise be represented as a group. In this sense, lobbyists compliment geographically-based representation.
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> 4 Columbia Journal of Law and Social Problems, 69 (1968)

In contemporary lawmaking by elective public bodies, lobbying creates risks to the public interest and to the integrity of the lawmaking process. In the judicial branch of government lobbying is commonly performed by presenting a brief amicus curiae, a device which is not only open and fair, but sometimes may make a constructive contribution to a judicial decision as well. The effectiveness of a brief depends on its own merits. But for lobbying the legislative and executive branches, four conditions tend toward governmental decisions against the interests of the electorate: (1) secrecy; (2) a widely differential impact--not correlated to the public interest--according to the amount of money spent by a lobbyist employer organization on a lobbyist and on his expense account; (3) where much is at stake, the lobbying function tends to go beyond information assembly and advocacy; competition escalates the spending and diverts its flow to influence rather than to present a case; and (4)

> ...the private interests are well spoken for and have more incentive than the occasional "public lobbyist." With the arrival of new and complex problems such as water and air pollution food additives and wonder drugs, it is increasingly important that this imbalance be rectified The lobbyists perform a service for the legislators and their constituents, and they have a constitutional right to do so. The public, however, must have the opportunity to evaluate their government, and to do so they must be informed about the different ingredients which are part of the legislative process. A disclosure requirement does not infringe on the rights of the lobbyist, and effectively vindicates the right of the public and the legislators.
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> 38 Fordham L. Rev. 524, 526 (1970)

The power of lobbyists creates a particular responsibility augmented by the above-mentioned risks. And this responsibility--almost a fiduciary relationship--when coupled with an ever-present potential conflict of interest with the beneficiaries of the lawmaking process, whom the lobbyists try to influence (i.e. lawmakers and voters), creates a duty to disclose. The basis for compelling this disclosure is not to satisfy some private interest, but is to satisfy a strong public need.

Where a lobbyist--or an employer organization acting directly--deals with a legislator or administrative rule maker, the matter is not private. The pending law or rule in question applies to all citizens.

Commensurate with the duty to disclose information is the right of others to receive that information. The lawmakers on whom the lobbyists press their attentions need the opportunity to receive pertinent information, and should have the right to receive it. Only in this manner may legislators make more knowledgeable decisions. As the Supreme Court stated:

> ... [F]ull realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal.
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> U.S. v. Harriss, 347 U.S. 612, 625, 98 L.Ed. 989 (1954)

Disclosure may free a legislator to make effective decisions, since his mind will thereby have become a more discriminating instrument for pursuit of his ends. Moreover, lobbyist disclosure will make it easier for lawmakers to resist undue or unethical pressures directed towards potential legislation.

Likewise, the electorate is entitled to this information.

> The theory behind such regulation is that if vital information concerning lobbies is made a matter of public knowledge, the people will be able to evaluate the propriety of the pressures which are brought to bear upon government officers. In particular, it is hoped that legislators will thereby be able to resist pressures which in the past they have submitted to because of fear that public opinion would not support them if they stood their ground.
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> Carr and Bernstein, American Democracy in Theory and Practice, Essentials Edition (Holt, Rinehart & Winston, 1961), pp. 122-123

See also, Comment, Disclosure Legislation, 76 Harv. L. Rev. 1273, 1292 (1963).

The need for the citizen to know about how the money is spent does not simply relate to the possibly corrupt relationship--a "gift" in return for a favor of public decision or policy. It is just as important, and of wider application, to know what are the principal sources of money support for success or defeat of a candidate, a pending bill or a measure to be voted on directly by the citizens. The recipient can usefully be measured by the financial company he or it keeps.

A business corporation employing a lobbyist may deduct from taxable income most of the lobbying expenses incurred, Int. Rev. Code of 1954 [hereinafter cited as Code], §162(e), even though only a part of the legislation which the corporation is trying to influence may affect the business interest of the corporation, Code §1.162-20(c)(2)(ii)(b)(1). With a 50% corporate tax rate, citizen-taxpayers, in effect, subsidize half of this lobbying outlay. Obviously, such citizen-taxpayers have legitimate concern about how their tax money is being spent on public policies affecting their livelihoods and lives.

Where money is expended, it becomes a form of expression. The proposals that have been made do not forbid such expression but simply require that where money changing hands concerns the public interest, it must not be secret. Where money talks, the citizen must be allowed to listen. The proposals that have been made provide that the flow of money, as it relates to political decision-making, must be made known to the average citizen; only then can the citizen effectively exercise his constitutional right and duty to judge the merits and performance of those in political office. The proposals that have been made undertake to expose money's influence on political decisions, and thereby establish true freedom of communication.

The causal chain between money and decision-making by elected public officials is apparent: substantial funds contributed to a candidate may influence his political decisions; in a like manner, money to finance lobbying of public officials may influence the officials' decisions.

Other and related social evils which can be remedied by disclosure include:

(1) The unfair or unwise decisions made under the pressures of secret money, whether they be caused by conflict of interest, by simple influence to forbear or to shade one's views, by fear, by hope, or by obligation to repay an implied debt.

(2) The unconscionable bargaining position accruing to those wielding secret money and applying it to the political process: many people may accept the right of a richer person to buy a more lavish life style, but few accept his right to buy government favors--favors bought at the public's expense.

(3) The loss of public confidence in the political process.

Since the impact of private money on public men affects the public interest, citizens and lawmakers should be allowed to know the facts so that they may draw their own conclusions and pass their own judgments. This will inevitably lead to better informed decisions, and thereby freer decisions.

> Disclosure is like an antibiotic which can deal with ethical sicknesses in the field of public affairs. There was perhaps more general agreement upon this principle of disclosing full information to the public and upon its general effectiveness than upon any other proposal. It is hardly a sanction and certainly not a penalty. It avoids difficult conclusions as to what may be right or wrong. In this sense it is not even diagnostic; yet there is confidence that it will be helpful in dealing with questionable or improper practices. It would sharpen men's own judgments of right and wrong if they knew these acts would be challenged.
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> Ethical Standards in Government U.S. Senate Subcommittee Report on the Establishment of a Commission on Ethics in Government, 82nd Cong., 1st Sess. (1951), p.37

The significance of disclosed information is not only a moral or criminal matter. For example, if lobbyist disclosure revealed that a certain measure were supported by the commercial banks and opposed by the casualty insurance companies, neither position might necessarily have any moral connotation, but such knowledge might well enable some people to decide the course they might wish to take in relation to that measure. Disclosure, therefore, is not just to reveal malpractices. It is primarily to enhance rational decision-making.

> The difficulty here is that the ordinary operation of a disclosure statute cannot reasonably be expected to provide evidence of impropriety, unless this is narrowly defined as group expenditures or activities deemed excessive after the fact by an electoral consensus registered against candidates or proposals publicly associated with them, and this kind of test would be difficult to apply in most situations. There is even less reason to assume that disclosure requirements can reveal violations of the less elusive juridical standards (bribery, fraud, intimidation,

> and the like) ... The ultimate end of a disclosure law is to convey special facts to plain people. This does not necessarily involve the assumption that if "people are free and have access to the 'facts', they will all want the same thing in any given political situation." It assumes only that certain facts are relevant to public judgment, and that the public therefore, should have them, reacting however their preferences or intellectual ingenuity may dictate.
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> Edgar Lane, Lobbying and The Law, p. 184, 168

III. CONSTITUTIONALITY OF DISCLOSURE STATUTES

The United States Supreme Court has had the opportunity to review the disclosure statutes dealing with money in politics and has found them to be constitutional.

In Burroughs & Cannon v. U. S., 290 U.S. 534 (1934), the United States Supreme Court upheld the constitutionality of federal legislation requiring "public disclosure of political contributions, together with the names of contributors and other details." The Supreme Court, in upholding the constitutionality of the Act, stated:

> To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection.
>
> Id. at 545

Burroughs was applied to a First Amendment claim in United States v. Harriss, 347 U.S. 672, 625 (1954). The interest cited above in Burroughs was treated in Harriss as a compelling state interest which supported the Lobbying

Act's disclosure requirements against a claim that the Act infringed First Amendment rights.

In 1960, the Fifth Circuit Court of Appeals declared that:

> The Congress is not prohibited by the First Amendment guaranty of the right to petition the Government for redress of grievances from exercising measures of self-protection in requiring disclosures of lobbying activities.
> Wilkinson v. U.S., 272 F.2d 783, 787 (5th Cir., 1960)

The federal act, declared constitutional in United States v. Harriss, supra, required disclosure of receipts and expenditures by lobbyists before Congress "who for hire attempt to influence legislation or who collect or spend funds for that purpose." Supra, 25 625.

Through legislative experimentation and judicial testing it has been established that we may constitutionally require public disclosure of comprehensive information relating to the effect of money on the political process.

The Harriss holding has been reaffirmed in several recent cases, including Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1 (1961). In that case the Court said:

> In a number of situations in which secrecy or the concealment of associations has been regarded as a threat to public safety and to the effective free functioning of our national institutions Congress has met the threat by requiring registration or disclosure.
> Supra, at 97

The Court then proceeded to discuss several laws requiring such registration or disclosure. Among them was the Federal Regulation of Lobbying Act, which:

> ...[R]equires any person receiving any contributions or expending any money for the purposes of influencing the passage or defeat of legislation to file with the Clerk of the House quarterly statements which set out the name and address of each person who has made a contribution of $500 or more not mentioned in the preceding report. It also requires that any person who engages himself for pay for the purpose of attempting to influence the passage or defeat of legislation, before doing anything in furtherance of that objective, register with the Clerk of the House and the Secretary of the Senate, and state in writing, inter alia, his name and address and the name and address of the person by whom he is employed, and in whose interest he works. These paid lobbyists must file quarterly reports of all money received and expended in carrying on their work, to whom paid, for what purposes, the names of publications in which they have caused any articles to be published, and the proposed legislation they are employed to support or oppose; this information is to be printed in the Congressional Record. In United States v. Harriss, 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989, we held that the First Amendment did not prohibit the prosecution of criminal informations charging violation of the registration and reporting provisions of the Act. We said:
>
> > Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups

> seeking favored treatment while masqueradin
> as proponents of the public weal. This is
> the evil which the Lobbying Act was designe
> to help prevent.
>
> Toward that end, Congress has not sought
> to prohibit these pressures. It has merely
> provided for a modicum of information from
> those who for hire attempt to influence
> legislation or who collect or spend funds
> for that purpose. It wants only to know
> who is being hired, who is putting up the
> money, and how much ... Id., 347 U.S. at
> page 625, 74 S.Ct. at page 816.
>
> Supra, 1412-1413

The Court added further:

> Certainly, as the Burroughs and Harriss case
> abundantly recognize, secrecy of association
> and organizations, even among groups concern
> exclusively with political processes, may un
> some circumstances constitute a danger whic
> legislatures do not lack constitutional pow
> to curb.
>
> Supra, 101

Even Justice Douglas, in his dissent in the Communist Party case, supra, recognized the principle of Harriss:

> Picketing is free speech plus (citations omi
> and hence can be restricted in all instance
> and banned in some ... Though the activitie
> themselves are under the First Amendment, th
> manner of their exercise or their collatera
> aspects fall without it.
>
> Like reasons underlie our decisions which su
> tain laws that require various groups to re
> ister before engaging in specified activities
> Thus, lobbyists who receive fees for attemp
> to influence the passage or defeat of legisla
> tion in Congress may be required to registe
> United States v. Harriss, 347 U.S. 612. Cri
> nal sanctions for failure to report and to dis
> close all contributions made to political pa
> are permitted. Burroughs v. United States, 290
> U.S. 534, ... In short, the exercise of Fir
> Amendment rights often involves business or
> commercial implications which Congress in it
> wisdom may desire to be disclosed. ...
>
> Supra, at 173-74

In the leading case of National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449 (1958), the United States Supreme Court declared that an order requiring the association to produce records including names and addresses of all members and agents was unconstitutional because it imposed a substantial restraint upon members' exercise of their right to freedom of association. In so doing, the Court discussed with approval the First Amendment aspects of Harriss, supra:

> In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgement of such rights, even though unintended, may inevitably follow from varied forms of governmental action. Thus in [American Communications Ass'n v.] Douds, [339 U.S. 382 (1950)] the Court stressed that the legislation there challenged, which on its face sought to regulate labor unions and to secure stability in interstate commerce, would have the practical effect "of discouraging" the exercise of constitutionally protected political rights, 339 U.S. at page 393, 70 S.Ct. at page 681, and it upheld the statute only after concluding that the reasons advanced for its enactment were constitutionally sufficient to justify its possible deterrent effect upon such freedoms. Similar recognition of possible unconstitutional intimidation of the free exercise of the right to advocate underlay this Court's narrow construction of the authority of a congressional committee investigating lobbying and of an Act regulating lobbying, although in neither case was there an effort to suppress speech. United States v. Rumely, 345 U.S. 41, 46-47, 73 S.Ct. 543, 546, 97 L.Ed. 770; United States v. Harriss, 347 U.S. 612, 625-626, 74 S.Ct. 808, 815-816, 98 L.Ed. 989.
>
> Supra, 1171

In Gibson v. Florida Legislative Investigation Commission, 372 U.S. 539 (1963), the United States Supreme Court again applied the "substantial relation" test. Supra at 546. In Gibson, supra, unlike in Harriss, supra, the Court found no nexus between the NAACP Miami branch and Communist activities which was asserted in an attempt to justify an investigation into the local NAACP by a state legislative committee.

Likewise, in Shelton v. Tucker, 364 U.S. 479 (1960), the Court struck down as overly broad a state requirement that every teacher in a state-supported school or college file annually an affidavit listing without limitation every organization to which he had belonged or contributed during the previous five years. The fatal defect, unlike in Harriss, supra, was that the statute required disclosure of many associations that clearly bore no relation to the legitimate object of inquiry. Supra, 485.

In CSC v. Letter Carriers, 413 U.S. ___, 37 L.Ed.2d 796 (1973), the Supreme Court upheld the constitutionality, against a First Amendment challenge, of the Hatch Act provision forbidding federal employees "to take an active part in political management or in political campaigns." 5 U.S.C. sec. 7324(a)(2). More specifically, Congress was held to have the power to forbid federal employees from:

> holding a party office, working at the polls and acting as party paymaster for other party workers ... organizing a political party or club; actively participating in fund-raising activities for a partisan candidate or political party; become a partisan candidate for, or campaigning for, an elective public office; actively managing the campaign of a partisan candidate for political office; initiating or circulating a nominating petition or soliciting votes for a partisan candidate for public office; or serving as a delegate, alternate or proxy to a political party convention.
>
> Supra at 804

If it is not a violation of the First Amendment for a statute to prohibit a person to hold public employment and to take part as a citizen in shaping public policy through political activity, it surely is not a violation of the First Amendment for statutes such as those proposed to resolve lobbyists' potential conflict of interest by requiring disclosure of where the money comes from and where it goes.

It is evident from the foregoing that the principle that the First Amendment does not prohibit requirements that lobbyists disclose their finances, first enunciated by Harriss, supra, is still good law.

If an improved lobbyist registration act is precisely drawn to only include substantial lobbying activities, and there are no ambiguities concerning the reporting by organizations which receive or spend money to influence

political decisions that cannot be clarified by administrative or judicial determination, it would regulate the precise area dealt with in Harriss, supra, and be constitutional.

APPENDIX D

During Common Cause's Open up the System program in the Fall of 1974, all House and Senate candidates were asked the following questions regarding lobbying disclosure:

Question 1. Disclosure of lobbying of Legislative and Executive Branches of the Federal Government--

Will you vote for legislation that would require comprehensive public disclosure of lobbying activities by individuals and groups spending money to influence legislative actions and Executive Branch actions?

Question 2. Logging--

[Should such disclosure include a requirement of] logging by Executive Branch officials of lobbyists' contacts?

Y - Yes
N - No
U - Undecided
0 - No response to this question

Summary of Responses*

Question 1

	Yes	No	Undecided	No Response
House	322	1	16	94
Senate	54	1	1	45

Question 2

House	265	12	19	136
Senate	46	4	0	51

* These figures have been updated since preparation of testimony.

	Question 1	Question 2
ALABAMA	Lobby Disclosure	Logging
Allen, James B.	0	0
Sparkman, John	0	0
ALASKA		
Gravel, Mike	Y	Y
STEVENS, TED	0	0
ARIZONA		
FANNIN, PAUL J.	0	0
GOLDWATER, BARRY	Y	Y
ARKANSAS		
Bumpers, Dale	U	0
McClellan, John L.	0	0
CALIFORNIA		
Cranston, Alan	Y	Y
Tunney, John V.	Y	Y
COLORADO		
Hart, Gary W.	Y	Y
Haskell, Floyd K.	Y	Y
CONNECTICUT		
Ribicoff, Abraham A.	Y	Y
WEICKER, LOWELL P.	Y	Y
DELAWARE		
Biden, Joseph R.	Y	Y
ROTH, WILLIAM V.	Y	0
FLORIDA		
Chiles, Lawton	Y	Y
Stone, Richard	Y	Y
GEORGIA		
Nunn, Sam	0	0
Talmadge, Herman E.	0	0

HAWAII	Lobby Disclosure	Logging
FONG, HIRAM L.	0	0
Inouye, Daniel K.	Y	Y
IDAHO		
Church, Frank	Y	N
MCCLURE, JAMES A.	0	0
ILLINOIS		
PERCY, CHARLES H.	0	Y
Stevenson, Adlai E.	Y	Y
INDIANA		
Bayh, Birch	Y	Y
Hartke, Vance	0	0
IOWA		
Clark, Richard	Y	Y
Culver, John C.	Y	Y
KANSAS		
DOLE, ROBERT	Y	Y
PEARSON, JAMES B.	0	0
KENTUCKY		
Ford, Wendell H.	Y	0
Huddleston, Walter	0	0
LOUISIANA		
Johnston, J. Bennett	Y	Y
Long, Russell B.	0	0
MAINE		
Hathaway, William D.	0	0
Muskie, Edmund S.	0	0
MARYLAND		
BEALL, J. GLENN	Y	Y
MATHIAS, CHARLES MCC.	Y	Y
MASSACHUSETTS		
BROOKE, EDWARD W.	Y	Y
Kennedy, Edward M.	Y	Y

MICHIGAN	Lobby Disclosure	Logging
GRIFFIN, ROBERT P.	0	0
Hart, Philip A.	Y	Y
MINNESOTA		
Humphrey, Hubert H.	Y	Y
Mondale, Walter F.	Y	Y
MISSISSIPPI		
Eastland, James O.	0	0
Stennis, John C.	N	N
MISSOURI		
Eagleton, Thomas F.	Y	Y
Symington, Stuart	Y	Y
MONTANA		
Mansfield, Mike	0	0
Metcalf, Lee	0	0
NEBRASKA		
CURTIS, CARL T.	0	0
HRUSKA, ROMAN L.	0	0
NEVADA		
Cannon, Howard W.	Y	0
LAXALT, PAUL	0	0
NEW HAMPSHIRE		
McIntyre, Thomas	0	0
Durkin, John A.	Y	Y
WYMAN, LOUIS C.	Y	0
NEW JERSEY		
CASE, CLIFFORD P.	0	0
Williams, Harrison A.	Y	Y
NEW MEXICO		
DOMENICI, PETE V.	Y	0
Montoya, Joseph M.	Y	N
NEW YORK		
BUCKLEY, JAMES L.	0	0
JAVITS, JACOB K.	Y	Y

NORTH CAROLINA	Lobby Disclosure	Logging
HELMS, JESSE A.	0	0
Morgan, Robert B.	Y	Y
NORTH DAKOTA		
Burdick, Quentin N.	Y	Y
YOUNG, MILTON R.	0	0
OHIO		
Glenn, John H.	Y	Y
TAFT, ROBERT	0	0
OKLAHOMA		
BARTLETT, DEWEY F.	0	0
BELLMON, HENRY	0	0
OREGON		
HATFIELD, MARK O.	0	0
PACKWOOD, ROBERT W.	Y	Y
PENNSYLVANIA		
SCHWEIKER, RICHARD S.	Y	Y
SCOTT, HUGH	Y	Y
RHODE ISLAND		
Pastore, John O.	0	0
Pell, Claiborne	0	0
SOUTH CAROLINA		
Hollings, Ernest F.	Y	Y
THURMOND, STROM	0	0
SOUTH DAKOTA		
Abourezk, James	Y	Y
McGovern, George	Y	Y
TENNESSEE		
BAKER, HOWARD H.	0	0
BROCK, BILL	Y	Y
TEXAS		
Bentsen, Lloyd	Y	0
TOWER, JOHN G.	0	0

UTAH	Lobby Disclosure	Logging
GARN, E.J.	Y	Y
Moss, Frank E.	Y	N
VERMONT		
Leahy, Patrick J.	Y	Y
STAFFORD, ROBERT T.	Y	Y
VIRGINIA		
Byrd, Harry F.	0	0
SCOTT, WILLIAM LLOYD	0	0
WASHINGTON		
Jackson, Henry M.	0	0
Magnuson, Warren G.	0	0
WEST VIRGINIA		
Byrd, Robert C.	0	0
Randolph, Jennings	0	0
WISCONSIN		
Nelson, Gaylord	0	0
Proxmire, William	Y	Y
WYOMING		
HANSEN, CLIFFORD P.	Y	Y
McGee, Gale W.	0	0

		Question 1 Lobby Disclosure	Question 2 Logging
	ALABAMA		
1	EDWARDS, JACK	Y	Y
2	DICKINSON, WILLIAM	0	0
3	Nichols, Bill	0	0
4	Bevill, Tom	0	0
5	Jones, Robert E.	0	0
6	BUCHANAN, JOHN	Y	Y
7	Flowers, Walter	0	0
	ALASKA		
AL	YOUNG, DONALD E.	Y	N
	ARIZONA		
1	RHODES, JOHN J.	U	N
2	Udall, Morris K.	Y	Y
3	STEIGER, SAM	Y	Y
4	CONLAN, JOHN B.	Y	Y
	ARKANSAS		
1	Alexander, Bill	Y	0
2	Mills, Wilbur D.	Y	Y
3	HAMMERSCHMIDT, JOHN P.	0	0
4	Thorton, Ray	0	0
	CALIFORNIA		
1	Johnson, Harold T.	0	0
2	CLAUSEN, DON H.	0	0
3	Moss, John E.	U	N
4	Leggett, Robert L.	Y	0
5	Burton, John L.	Y	Y
6	Burton, Phillip	Y	Y
7	Miller, George	Y	0
8	Dellums, Ronald V.	Y	Y
9	Stark, Pete	Y	Y
10	Edwards, Don	Y	Y
11	Ryan, Leo J.	U	U
12	MCCLOSKEY, PAUL N.	Y	Y

	CALIFORNIA (con'td)	Lobby Disclosure	Logging
13	Mineta, Norman Y.	Y	Y
14	McFall, John J.	0	N
15	Sisk, B.F.	Y	Y
16	TALCOTT, BURT L.	Y	0
17	Krebs, John	Y	Y
18	KETCHUM, WILLIAM M.	Y	Y
19	LAGOMARSINO, ROBERT J.	Y	Y
20	GOLDWATER, BARRY M.	Y	Y
21	Corman, James C.	Y	Y
22	MOORHEAD, CARLOS	Y	Y
23	Rees, Thomas M.	Y	Y
24	Waxman, Henry A.	Y	N
25	Roybal, Edward R.	Y	Y
26	ROUSSELOT, JOHN H.	Y	Y
27	Bell, Alphonzo	Y	Y
28	Burke, Yvonne Brathwaite	Y	Y
29	Hawkins, Augustus F.	0	0
30	Danielson, George E.	Y	U
31	Wilson, Charles H.	Y	Y
32	Anderson, Glenn M.	Y	Y
33	CLAWSON, DEL	0	0
34	Hannaford, Mark W.	Y	Y
35	Lloyd, Jim	Y	0
36	Brown, George E.	Y	Y
37	vacancy		
38	Patterson, Jerry M.	Y	Y
39	WIGGINS, CHARLES E.	Y	Y
40	HINSHAW, ANDREW J.	Y	0
41	WILSON, BOB	0	0
42	Van Deerlin, Lionel	Y	N
43	BURGENER, CLAIR W.	Y	Y
	COLORADO		
1	Schroeder, Patricia	Y	Y
2	Wirth, Timothy E.	Y	Y
3	Evans, Frank E.	Y	0
4	JOHNSON, JAMES P.	Y	Y
5	ARMSTRONG, WILLIAM L.	U	U

	CONNECTICUT	Lobby Disclosure	Logging
1	Cotter, William R.	Y	Y
2	Dodd, Christopher J.	Y	Y
3	Giaimo, Robert N.	Y	U
4	MCKINNEY, STEWART B.	Y	Y
5	SARASIN, RONALD A.	Y	Y
6	Moffett, Anthony J.	Y	Y
	DELAWARE		
AL	DU PONT, PIERRE S.	Y	U
	FLORIDA		
1	Sikes, Robert L.F.	0	0
2	Fuqua, Don	Y	0
3	Bennett, Charles E.	Y	Y
4	Chappell, Bill	0	0
5	KELLY, RICHARD	Y	Y
6	YOUNG, C.W. BILL	Y	Y
7	Gibbons, Sam	0	0
8	Haley, James A.	Y	Y
9	FREY, LOUIS	Y	0
10	BAFALIS, SKIP	Y	Y
11	Rogers, Paul G.	Y	Y
12	BURKE, J. HERBERT	Y	Y
13	Lehman, William	Y	Y
14	Pepper, Claude	Y	Y
15	Fascell, Dante B.	Y	Y
	GEORGIA		
1	Ginn, Ronald B. (Bo)	Y	Y
2	Mathis, Dawson	0	0
3	Brinkley, Jack	Y	Y
4	Levitas, Elliot H.	Y	0
5	Young, Andrew	Y	Y
6	Flynt, John J.	Y	Y
7	McDonald, Lawrence P.	Y	U
8	Stuckey, W.S. (Bill)	Y	Y
9	Landrum, Phil M.	0	0
10	Stephens, Robert G.	U	0

	HAWAII	Lobby Disclosure	Logging
1	Matsunaga, Spark M.	Y	Y
2	Mink, Patsy T.	Y	Y
	IDAHO		
1	SYMMS, STEVEN D.	N	N
2	HANSEN, GEORGE V.	Y	Y
	ILLINOIS		
1	Metcalfe, Ralph H.	Y	Y
2	Murphy, Morgan F.	Y	Y
3	Russo, Martin A.	Y	Y
4	DERWINSKI, EDWARD J.	U	0
5	vacancy		
6	HYDE, HENRY J.	Y	Y
7	Collins, Cardiss	0	0
8	Rostenkowski, Dan	0	0
9	Yates, Sidney R.	0	0
10	Mikva, Abner J.	Y	Y
11	Annunzio, Frank	Y	Y
12	CRANE, PHILLIP M.	Y	Y
13	MCCLORY ROBERT	0	0
14	ERLENBORN, JOHN N.	Y	N
15	Hall, Tim L.	Y	Y
16	ANDERSON, JOHN B.	Y	0
17	O'BRIEN, GEORGE M.	0	Y
18	MICHEL, ROBERT H.	Y	0
19	RAILSBACK, TOM	Y	Y
20	FINDLEY, PAUL	Y	Y
21	MADIGAN, EDWARD R.	Y	Y
22	Shipley, George E.	Y	Y
23	Price, Melvin	Y	Y
24	Simon, Paul	Y	Y
	INDIANA		
1	Madden, Ray J.	Y	Y
2	Fithian, Floyd J.	Y	Y
3	Brademas, John	Y	Y

	INDIANA (con'td)	Lobby Disclosure	Logging
4	Roush, J. Edward	Y	0
5	HILLIS, ELWOOD	Y	Y
6	Evans, David W.	Y	Y
7	MYERS, JOHN T.	Y	Y
8	Hayes, Philip H.	Y	Y
9	Hamilton, Lee H.	Y	Y
10	Sharp, Philip R.	Y	Y
11	Jacobs, Andrew	Y	Y
	IOWA		
1	Mezvinsky, Edward	Y	Y
2	Blouin, Michael T.	Y	Y
3	GRASSLEY, CHARLES E.	Y	Y
4	Smith, Neal	Y*	0
5	Harkin, Tom	Y	Y
6	Bedell, Berkley	Y	Y
	KANSAS		
1	SLBELIUS, KEITH	Y	0
2	Keys, Martha E.	Y	Y
3	WINN, LARRY	Y	Y
4	SHRIVER, GARNER E.	Y	Y
5	SKUBITZ, JOE	0	0
	KENTUCKY		
1	Hubbard, Carroll	Y	0
2	Natcher, William H.	Y	Y
3	Mazzoli, Romano	Y	U
4	Snyder, M.G.	0	0
5	Carter, Tim Lee	Y	Y
6	Breckinridge, John B.	Y	Y
7	Perkins, Carl D.	Y	Y
	LOUISIANA		
1	Hebert, F. Edward	0	0
2	Boggs, Corinne C.	Y	U
3	TREEN, DAVID C.	0	0

*Legislative only

	LOUISIANA (con'td)	Lobby Disclosure		Logging	
4	Waggonner, Joe D.		0		0
5	Passman, Otto E.		0		0
6	MOORE, W. HENSON	Y			0
7	Breaux, John B.	Y		Y	
8	Long, Gillis W.		0		0
	MAINE				
1	EMERY, DAVID F.	Y			0
2	COHEN, WILLIAM S.	Y			0
	MARYLAND				
1	BAUMAN, ROBERT E.		0		0
2	Long, Clarence D.	Y		Y	
3	Sarbanes, Paul S.	Y		Y	
4	HOLT, MARJORIE S.		U		U
5	Spellman, Gladys N.	Y		Y	
6	Byron, Goodloe E.		U		0
7	Mitchell, Parren J.	Y		Y	
8	GUDE, GILBERT	Y		Y	
	MASSACHUSETTS				
1	CONTE, SILVIO O.	Y		Y	
2	Boland, Edward P.	Y		Y	
3	Early, Joseph D.	Y		Y	
4	Drinan, Robert F.	Y		Y	
5	Tsongas, Paul E.	Y		Y	
6	Harrington, Michael	Y		Y	
7	Macdonald, Torbert H.	Y		Y	
8	O'Neill, Thomas P.		U		U
9	Moakley, John Joseph	Y		Y	
10	HECKLER, MARGARET M.	Y		Y	
11	Burke, James A.	Y		Y	
12	Studds, Gerry E.	Y		Y	
	MICHIGAN				
1	Conyers, John	Y		Y	
2	ESCH, MARVIN L.	Y		Y	
3	BROWN, GARY	Y		Y	
4	HUTCHINSON, EDWARD	Y*			U

*Legis. only

	MICHIGAN (con'td)	Lobby Disclosure		Logging	
5	Vander Veen, Richard F.	Y		Y	
6	Carr, Bob	Y		Y	
7	Riegle, Donald W.	Y			0
8	Traxler, Bob	Y		Y	
9	VANDER JAGT, GUY	Y		Y	
10	CEDERBERG, ELFORD	Y*			0
11	RUPPE, PHILLIP E.	Y*			U
12	O'Hara, James G.		0		0
13	Diggs, Charles C.	Y		Y	
14	Nedzi, Lucien N.	Y		Y	
15	Ford, William D.	Y		Y	
16	Dingell, John D.	Y		Y	
17	Brodhead, William M.	Y		Y	
18	Blanchard, James J.	Y		Y	
19	BROOMFIELD, WILLIAM S.	Y		Y	
	MINNESOTA				
1	QUIE, ALBERT H.	Y		Y	
2	HAGEDORN, TOM	Y		Y	
3	FRENZEL, BILL	Y			0
4	Karth, Joseph E.	Y		Y	
5	Fraser, Donald M.	Y		Y	
6	Nolan, Richard	Y		Y	
7	Bergland, Bob	Y			U
8	Oberstar, James L.	Y			0
	MISSISSIPPI				
1	Whitten, Jamie L.		0		0
2	Bowen, David R.	Y		Y	
3	Montgomery, G.V. (Sonny)		0		0
4	COCHRAN, THAD		0		0
5	LOTT, TRENT	Y		Y	
	MISSOURI				
1	Clay, William		0		0
2	Symington, James W.	Y		Y	
3	Sullivan, Leonor K.		0		0
4	Randall, William J.	Y*		Y	
5	Bolling, Richard		0		0
6	Litton, Jerry		0		0
7	TAYLOR, GENE	Y		Y	
8	Ichord, Richard H.		0		0

*Legis. only

	MISSOURI (con'td)	Lobby Disclosure	Logging
9	Hungate, William L.	0	0
10	Burlison, Bill D.	0	0
	MONTANA		
1	Baucus, Max S.	Y	Y
2	Melcher, John	0	0
	NEBRASKA		
1	THONE, CHARLES	Y	Y
2	MC COLLISTER, JOHN Y.	Y	Y
3	SMITH, VIRGINIA	Y	Y
	NEVADA		
AL	Santini, James	Y	Y
	NEW HAMPSHIRE		
1	D'Amours, Norman E.	Y	0
2	CLEVELAND, JAMES C.	Y	0
	NEW JERSEY		
1	Florio, James J.	Y	Y
2	Hughes, William J.	Y	Y
3	Howard, James J.	0	0
4	Thompson, Frank	Y	Y
5	FENWICK, MILLICENT	Y	Y
6	FORSYTHE, EDWIN B.	Y	Y
7	Maguire, Andrew	Y	Y
8	Roe, Robert A.	Y	Y
9	Helstoski, Henry	Y	Y
10	Rodino, Peter W.	Y	Y
11	Minish, Joseph G.	0	0
12	RINALDO, MATTHEW J.	Y	Y
13	Meyner, Helen S.	Y	Y
14	Daniels, Dominick V.	0	0
15	Patten, Edward, J.	Y	Y
	NEW MEXICO		
1	LUJAN, MANUEL	Y	Y
2	Runnell, Harold	Y	Y

	NEW YORK	Lobby Disclosure		Logging	
1	Pike, Otis G.	Y			U
2	Downey, Thomas J.	Y		Y	
3	Ambro, Jerome A.	Y		Y	
4	LENT, NORMAN F.	Y		Y	
5	WYDLER, JOHN W.	Y		Y	
6	Wolff, Lester L.	Y		Y	
7	Addabbo, Joseph P.	Y		N	
8	Rosenthal, Benjamin S.	Y		Y	
9	Delaney, James J.		0		0
10	Biaggi, Mario	Y		Y	
11	Scheuer, James H.	Y		Y	
12	Chisholm, Shirley	Y		Y	
13	Solarz, Stephen J.	Y		Y	
14	Richmond, Frederick W.	Y		Y	
15	Zeferetti, Leo C.		0		0
16	Holtzman, Elizabeth	Y		Y	
17	Murphy, John M.		0		0
18	Koch, Edward I.	Y		Y	
19	Rangel, Charles B.	Y		Y	
20	Abzug, Bella S.	Y		Y	
21	Badillo, Herman	Y		Y	
22	Bingham, Jonathan B.	Y		Y	
23	PEYSER, PETER A.	Y		Y	
24	Ottinger, Richard L.	Y		Y	
25	FISH, HAMILTON	Y		Y	
26	GILMAN, BENJAMIN A.	Y		Y	
27	McHugh, Matthew F.	Y		Y	
28	Stratton, Samuel S.	Y			U
29	Pattison, Edward W.	Y		Y	
30	MCEWEN, ROBERT C.	Y *			U
31	MITCHELL, DONALD J.	Y		Y	
32	Hanley, James M.	Y		Y	
33	WALSH, WILLIAM F.	Y		Y	
34	HORTON, FRANK	Y		Y	
35	CONABLE, BARBER B.	Y		Y	
36	LaFalce, John J.	Y		Y	
37	Nowak, Henry J.	Y		Y	
38	KEMP, JACK F.	Y		Y	
39	HASTINGS, JAMES F.	Y			U

*Legis. only

	NORTH CAROLINA	Lobby Disclosure	Logging
1	Jones, Walter B.	0	0
2	Fountain, L. H.	Y	Y
3	Henderson, David N.	0	0
4	Andrews, Ike F.	Y	Y
5	Neal, Stephen L.	Y	Y
6	Preyer, Richardson	Y	Y
7	Rose, Charles G.	0	0
8	Hefner, W. G. (Bill)	0	0
9	MARTIN, JAMES G.	Y	N
10	BROYHILL, JAMES T.	0	0
11	Taylor, Roy A.	0	0
	NORTH DAKOTA		
AL	ANDREWS, MARK	Y	Y
	OHIO		
1	GRADISON, WILLIS D.	Y	Y
2	CLANCY, DONALD D.	Y	Y
3	WHALEN, CHARLES W.	Y	0
4	GUYER, TENNYSON	Y	Y
5	LATTA, DELBERT L.	Y	Y
6	HARSHA, WILLIAM H.	0	0
7	BROWN, CLARENCE J.	0	0
8	KINDNESS, THOMAS N.	0	0
9	Ashley, Thomas L.	Y	Y
10	MILLER, CLARENCE E.	0	0
11	STANTON, J. WILLIAM	Y	Y
12	DEVINE, SAMUEL L.	Y	Y
13	MOSHER, CHARLES A.	Y	Y
14	Selberling, John F.	Y	Y
15	WYLIE, CHALMERS P.	Y	Y
16	REGULA, RALPH S.	Y	Y
17	ASHBROOK, JOHN M.	0	0
18	Hays, Wayne L.	0	0
19	Carney, Charles J.	0	0
20	Stanton, James V.	Y	Y
21	Stokes, Louis	Y	Y
22	Vanik, Charles A.	Y	Y
23	Mottl, Ronald M.	Y	Y

		Lobby Disclosure	Logging
	OKLAHOMA		
1	Jones, James R.	Y	0
2	Risenhoover, Theodore	Y	Y
3	Albert, Carl	Y*	0
4	Steed, Tom	0	0
5	JARMAN, JOHN	Y	Y
6	English, Glenn	Y	Y
	OREGON		
1	AuCoin, Les	Y	Y
2	Ullman, Al	0	0
3	Duncan, Robert	U	U
4	Weaver, James	Y	Y
	PENNSYLVANIA		
1	Barrett, William A.	0	0
2	Nix, Robert N.C.	Y	Y
3	Green, William J.	Y	Y
4	Eilberg, Joshua	Y	Y
5	SCHULZE, RICHARD T.	Y	Y
6	Yatron, Gus	Y	Y
7	Edgar, Robert W.	Y	0
8	BIESTER, EDWARD G., JR	Y	Y
9	SHUSTER, E. G.	Y	Y
10	MC DADE, JOSEPH M.	Y	Y
11	Flood, Daniel J.	U	0
12	Murtha, John P.	Y	0
13	COUGHLIN, R. LAWRENCE	Y	Y
14	Moorhead, William S.	Y	Y
15	Rooney, Fred B.	Y	Y
16	ESHLEMAN, EDWIN D.	Y	Y
17	SCHNEEBELI, HERMAN T.	Y	N
18	HEINZ, H. JOHN, III	Y	Y
19	GOODLING, WILLIAM F.	0	0
20	Gaydos, Joseph M.	0	0
21	Dent, John H.	Y	Y
22	Morgan, Thomas E.	0	0
23	JOHNSON, ALBERT W.	Y	Y
24	Vigorito, Joseph P.	Y	Y
25	MYERS, GARY A.	Y	Y

	RHODE ISLAND	Lobby Disclosure	Logging
1	St Germain, Fernand J.	Y	Y
2	Beard, Edward P.	Y	Y
	SOUTH CAROLINA		
1	Davis, Mendel J.	Y	Y
2	SPENCE, FLOYD	U	U
3	Derrick, Butler C. Jr.	Y	Y
4	Mann, James R.	Y	Y
5	Holland, Kenneth L.	Y	Y
6	Jenrette, John W. Jr.	Y	Y
	SOUTH DAKOTA		
1	PRESSLER, LARRY	Y	Y
2	ABDNOR, JAMES	0	0
	TENNESSEE		
1	QUILLEN, JAMES H.	Y	0
2	DUNCAN, JOHN J.	0	0
3	Lloyd, Marilyn	Y	0
4	Evins, Joe L.	0	0
5	Fulton, Richard	U	0
6	BEARD, ROBIN L. JR.	0	0
7	Jones, Ed	0	0
8	Ford, Harold F.	Y	Y
	TEXAS		
1	Patman, Wright	0	0
2	Wilson, Charles	Y	Y
3	COLLINS, JAMES M.	0	0
4	Roberts, Ray	0	0
5	STEELMAN, ALAN	Y	Y
6	Teague, Olin	0	0
7	ARCHER, BILL	Y	0
8	Eckhardt, Bob	Y	0
9	Brooks, Jack	0	0
10	Pickle, J. J.	0	0
11	Poage, W. R.	U	0

	TEXAS	Lobby Disclosure		Logging	
12	Wright, Jim	Y		Y	
13	Hightower, John		0		0
14	Young, John		0		0
15	de la Garza, Eligio		0		0
16	White, Richard C.		0		0
17	Burleson, Omar		0		0
18	Jordan, Barbara C.	Y		Y	
19	Mahon, George		0		0
20	Gonzalez, Henry B.		0		0
21	Krueger, Robert	Y		Y	
22	Casey, Bob		0		0
23	Kazen, Abraham Jr.		0		0
24	Milford, Dale	Y		Y	
	UTAH				
1	McKay, K. Gunn	Y		Y	
2	Howe, Allen T.	Y		Y	
	VERMONT				
AL	JEFFORDS, JAMES M.	Y		Y	
	VIRGINIA				
1	Downing, Thomas N.	Y		Y	
2	WHITEHURST, G. WILLIAM	Y		Y	
3	Satterfield, David E.		0		0
4	DANIEL, ROBERT W. JR.	Y		Y	
5	Daniel, W. C. (Dan)		0		0
6	BUTLER, M. CALDWELL	Y		Y	
7	ROBINSON, J. KENNETH		U		0
8	Harris, Herbert E. II	Y		Y	
9	WAMPLER, WILLIAM C.	Y		Y	
10	Fisher, Joseph L.	Y		Y	

	WASHINGTON	Lobby Disclosure	Logging
1	PRITCHARD, JOEL	Y	Y
2	Meeds, Lloyd	Y	Y
3	Bonker, Don	Y	Y
4	McCormack, Mike	Y	Y
5	Foley, Thomas S.	Y	0
6	Hicks, Floyd	0	0
7	Adams, Brock	Y	Y
	WEST VIRGINIA		
1	Mollohan, Robert H.	0	0
2	Staggers, Harley O.	U	0
3	Slack, John M.	0	0
4	Hechler, Ken	Y	0
	WISCONSIN		
1	Aspin, Les	Y	0
2	Kastenmeier, Robert W.	Y	Y
3	Baldus, Alvin J.	Y	Y
4	Zablocki, Clement J.	Y	Y
5	Reuss, Henry S.	Y	Y
6	STEIGER, WILLIAM A.	Y	N
7	Obey, David R.	0	0
8	Cornell, Robert J.	Y	Y
9	KASTEN, ROBERT W. JR.	Y	Y
	WYOMING		
AL	Roncalio, Teno	Y	Y

Appendix E

REGISTRATION CODES

BY WHOM

P-Paid Lobbyist
C - Anyone Receiving Compensation
S - Anyone spending money to influence
R - Anyone Representing someone else to lobby
I - Anyone seeking to influence
AC - anyone appearing before a committee
E - Employer or Principal
A - Authorization by employer or principal
PC - Affecting private pecuniary interests

EXCEPTIONS

AC - only appear before committee
I - only appear before committee aws invited
CJ - appear before committee as part of job; no extra pay
AB - appear before committee on own behalf
BD - Bill-drafting, advising on effects of legislation
PO - public officials acting in official capacity
ML - members of Legislature
W - communication in writing only
O - other

INFORMATION ON REGISTRATION

L - Lobbyist E - Employer or Principal O - Other

N - Name
A - Address
BA - Business address
O - Occupation or nature of business
C - compensation
D - Duration of employment
S - subject matter
T - telephone
M - membership number
EX - show what expenses are to be reimbursed
OC - list officers of the corporation or association

ACTIVITY REPORT CODES

KINDS OF EXPENDITURES OR INCOME

A - all lobbying expenses or income specially for lobbyi
AA - all expenditures or income of any kind
L - payments to or through lobbyists only
PO - payments to or benefiting public officials
P - personal expenses (food, lodging)

EXCEPTIONS

P - personal expenses (food, lodging)
O - office expenses
I - amounts reportable to IRS as income

INFORMATION ABOUT INCOME OR EXPENSES

T - total
TC - totals by category
I - itemize
PN - payee's name
PA - payee's address
CN - contributor's name
CA - contributor's address
P - purpose
A - amount
L - location
D - date
BD - balance of money on hand, disposition to be made thereof

OTHER INFORMATION

S- subject matter
O - occupation
D - duration of employment
P - publications in which have caused articles or editorials to be published

ENFORCEMENT CODES

RR - Receive reports or registration
RC - Receive complaints
I - investigate
F - levy fines
CP - criminal prosecution
CV - civil action
A - audit or order an audit
S - subpoena

STATE	COVERAGE				REGISTRATION							
	Lobby of Leg Branch	Lobby of Ex. Approv /Veto	Lobby of Ex. Branch	Lobby by Public Offic.	When	With Whom	By Whom*	Excep-tions*	Information on Registration: Lobbyist or Indivi.*	Employer or Princl.*	Up-dates	Noti of Ter
Alabama Tit. 55, Sec. 327 (8-39)	Yes	Yes	No	No	w/in 5 days of activity	Ethics Commission	P,A	ML, AC, CJ, BD	N,A,O,BA,EN,EA,S,M		w/in 10 days	Y
ALASKA Sec. 24.45 010-150 chap.45	Yes	Yes	No	No	before lobby; valid until next reg. or spec. session	Dept of Adminis.	C,E	BD,ML,I	N,A,EN,EA,C,OEN,OEA, C,S	N,A,LN,LA,C,S	as to subj.	--
ARIZONA Sec. 1, Tit. 41, Chap 7 Art. 8.1	Yes	Yes	Yes	--	before lobby, & each Jan.	Secy State	C,S	ML,AB, PO,BD, AT	N,BA,EN,EA,D,EX,C, O	Employers would be included in definition of "lobbyist"	Quar-terly	-
ARKANSAS Chap 8, Sec. 4-801-804	Yes	No	No	No	at each biennial ses. regis. to last 2 yrs.	Clerk/House Secy. Sen.	R,C	ML	N,A,EN,EA,OEN,OEA,S			
CALIFORNIA Prop. 9	Yes	Yes	Yes	No	before lobby, thereafter w/in 20 da. begin. reg. session	Secy.State	P,A	PO,P,O	N,A,T,EN,EA,OEN,OEA, D, plus list of state agencies to be lobbied		w/in 20 da.	yes w/i 30
COLORADO Art.32	Yes	Yes	Yes	No	before lobby, each Jan.15	Secy.State	S,C	AC,PO	N,A,EN,EA,OEN,D, C,EX	N,A,LN,LA,D,C,EX	No	No

STATE	Frequency	BY INDIVIDUAL OR LOBBYIST OR OTHER (DEFINE)						BY EMPLOYER, PRINCIPAL OR OTHER (DEFINE)						Repor Publi
		Source of Income	Expenditures Kinds of*	Expenditures Exceptions*	Info. About*	Fin. Rel. w/Public Offic.	Other Info.	Source of Income	Expenditures Kinds of*	Expenditures Exceptions*	Info. About*	Fin. Rela. w/ Public Offic.	Other Info.	
ALABAMA	By 15th of mo. after mo. leg. in session	A: T by C of amt; Exclude P, I	A		T by C of Amount	Detail loans to leg; bus. rela. w/ pub. off.	S	A: T by C of Amt.	A	P,I	T by C of Amt.	Detail loans to leg., bus. rela. with public off.	S	Yes
ALASKA	w/in 30 da. after session	Registrants and anyone who received $ or thing of value to be used for lobbying "itemize" A: CN, CA,A	A,P					Employer and anyone who spent money in relation to legis.	A		PN,A,D, S		S	Yes
ARIZONA	Each Jan. for preceding yr. & monthly by 10th		A	P,O	I over $25: PN, P,T	Payments to legis. exempted from disc		Employers would be included in				definition of	"lobbyist"	Yes
ARKANSAS														
CALIFORNIA	monthly after mo. leg. in session & quarterly	A: CN, CA,A	A		PN,PA,A, D,P,S	Fin. rela between pub. off. & anyone lobbyist does $500 bus. with; name & title title ben. of gifts		Employers and anyone paying $250 or more in a month to influence leg. or admin. action "list major contributors; no amts.	A		$25: PN, PA,D,A, P, plus names of benefic.	of $1,000 or more w/pub. off.; Fin. rela. between pub. off. & anyone filer does $1,000 busin. with	S,LN,LA,C	Yes
COLORADO	monthly after mo. lobbying; yrly. by Jan. 15	AA $25 or more: list	A		I $25 or more: PN, P,A,T yrly cum.		S,P	AA $25 or more: "list"	A		I $25 or more: PN, P,T, yr. cum. by		S,P	Yes

STATE	PROHIBITIONS			ENFORCEMENT							
	Conting. Payment	Code of Conduct	Limits on payments to or for Public Officials	WHO ENFORCES AND POWERS POSSESSED					Fines	Prison	Citizen Complaint	Citizen Stand. to Sue
				Atty. Gen.	Local Prosecu.	Secy. State	Secy. Senate/ Clerk House	Indepen. Agency				
ALABAMA	Yes	Yes	$100 entertain. per yr. per pub. off.- if done w/ understanding of influence	CP				RR,I,RC,OA	Yes	Yes	Yes	--
ALASKA	Yes			CP		(Dept. of Admin) RR			Yes	Yes		
ARIZONA	Yes	Yes		I,CP	OR I,CP	RR			Yes	Yes		
ARKANSAS							RR					
CALIFORNIA	Yes	Yes	$10 per month	CP	OR CP	RR		CV,I,F,S	Yes		Yes	Yes
COLORADO	Yes			I,CP		RC,RR			Yes	Yes	No	No

TATE	COVERAGE				REGISTRATION							
	Lobby of Leg Branch	Lobby of Ex. Approv /Veto	Lobby of Ex. Branch	Lobby by Public Offic.	When	With Whom	By Whom*	Exceptions*	Information on Registration: Lobbyist or Indivi.*	Information on Registration: Employer or Princi.*	Updates	Notice of Term
onnecticut ec. 2-45	Yes	Yes	No	No	Before lobbying. Reg. is void 30 d. after session	Secy. of State	P	PO,BD	N,A,EN,EA,S			
elaware ouse Rule 8	Yes House Only	--	--	--	Before lobbying	Clerk of House	P, in or about House	ML	N,A,EN,EA,OEN,OEA,S			
lorida ouse ule 13 enate ule 9	Yes	No	No	No	Before lobbying	Clerk of House, Secy. of Senate	I	ML,AB	N,BA,EN,EA,S			
eorgia 7-1002	Yes	No	No	No	Before lobbying, for each reg.or extra session	Secy. of State	R	ML,AB	N,A,EN (check form where available)			
awaii		no law										
daho 974 nitiative	Yes				Before lobbying or w/in 30 days of employment and thereafter each January	Secy. of State	P: over $100 compensation in any calendar quarter	AC,PO	LN,LA,LBA,EN,EA,EO S: N+A person w/ custody of accounts; N+A members giving $500 or more in 2-year period		Yes	Yes

STATE	Frequency	BY INDIVIDUAL OR LOBBYIST OR OTHER (DEFINE)						BY EMPLOYER, PRINCIPAL OR OTHER (DEFINE)						Repo Publ
		Source of Income	Expenditures Kinds of*	Exceptions*	Info. About*	Fin. Rel w/Public Offic.	Other Info.	Source of Income	Expenditures Kinds of*	Exceptions*	Info. About*	Fin. Rela. w/ Public Offic.	Other Info.	
Connecticut	w/in 2 mo. after session								A		PN,A			
Delaware														
Florida	w/in 30 days adjournment, & Fri. of 1st wk. of session for the interim	"source of funds" for each expenditure	A	P	P,A	on regis.	--							yes
Georgia														
Hawaii														
Idaho	Quarterly; and weekly during session	--	JOINT REPORT SIGNED BY LOBBYIST AND EMPLOYER A	P	TC; $50 or more for entertainment: D, A, N of PO participating	Itemize all contributions to legislators: D,A,N of beneficiary	-- c		A:on behalf of lobbyist only		TC;Itemize $50 or more for entertainment; D, A,N of PO's participating	Itemize all contributions to legislators: D,A,N of beneficiary		yes

STATE	PROHIBITIONS			ENFORCEMENT								
				WHO ENFORCES AND POWERS POSSESSED								
	Conting. Payment	Code of Conduct	Limits on payments to or for Public Officials	Atty. Gen.	Local Prosecu.	Secy. State	Secy. Senate/ Clerk House	Indepen. Agency	Fines	Prison	Citizen Complaint	Citizen Stand. to Sue
Connecticut	Yes	--	--	CP	--	RR	--	--				
Delaware	--	yes	----------	----------								
Florida	--	yes	--	----------			RR	--------	prohibit from lobbying		----------	
Georgia	yes	----------							----------			
Hawaii												
Idaho	yes '	yes	------	CP		RR, I			yes	yes	yes	?

STATE	COVERAGE				REGISTRATION							
	Lobby of Leg Branch	Lobby of Ex. Approv /Veto	Lobby of Ex. Branch	Lobby by Public Offic.	When	With Whom	By Whom*	Excep-tions*	Information on Registration: Lobbyist or Indivi.*	Information on Registration: Employer or Princi.*	Up-dates	Not. of Ter.
ILLINOIS Sec. 172-180	Yes	Yes	No	No	Before lobby-ing & yearly	Secy. of State	C,R	BD,PO, ML,I,O	N,A,EN,EA,OEN,OEA,S	--	--	yes
INDIANA (2-4-3)	Yes	--	--	--	w/in 1 week of employment	Secy. of State	E of paid lobbyists	--	N,A,BA,O,LN,LA,D,S	N,A,BA,O,LN,LA,D,S	yes	--
	Yes	No	No	No	Before lobbying	Secy. of State	Group of 2 or more pers. who receive or spend $ to influence	--	N,A,LN,LA,LO,S,OC: N,A,O	N,A LN,LA,LO,S OC: N,A,O	--	--
IOWA House & Senate rules	Yes	--	--	Yes	Before lobby-ing & yearly	Secy. Sen. Clerk of House	C, R, or anyone lobbying on reg.basis	O	N,A,T,EN,EA,S,OEN,OEA	--	yes	yes
KANSAS	Yes	--	Yes	--	Before lobby-ing, & reg. expires 12/31	Secy.State	P,S $100	PO	N,A,EN,EA,C,S,OEN,OEA	--		
KENTUCKY (6,250)	Yes	--	--	--	w/in one wk. of employ.	AG	P,A (PC only)	--	N,A,O,EN,EA,D,S,	--	as to subject matter	
LOUISIANA	Yes	--	Yes	--	Before lobbying	Clerk of House, Secy. Senate	P	AC,PD	N,BA,EN,EA,EO,OEN, OEA,OEO,O			

STATE	ACTIVITY REPORTS													Repor Publi
	Frequency	BY INDIVIDUAL OR LOBBYIST OR OTHER (DEFINE)						BY EMPLOYER, PRINCIPAL OR OTHER (DEFINE)						
		Source of Income	Expenditures			Fin. Rel. w/Public Offic.	Other Info.	Source of Income	Expenditures			Fin. Rela. w/ Public Offic.	Other Info.	
			Kinds of*	Exceptions*	Info. About*				Kinds of*	Exceptions*	Info. About*			
LLINOIS	In Apr & July of year Gen.Assem. in reg. sess. -w/in 20 days adj. spec.sess. -Jan.for portion of preceding yr. assem.not in sess.	--	A	O.P, other various expen. benefiting legislators	I over $25	--	--	----------						yes
NDIANA	w/in 30 days adj. of sess.								L		Not specified in law or on form			yes
	w/in 30 days after session							AA:PN	AA		PN, P			
OWA	monthly by 20th		A, PO, P		TC	Beneficiaries of expenses and contributions			Lobbyist reports employers' expenses, if known					yes
ANSAS	monthly by 10th,unless no expen.made	N,A	A	O	Over $50: PN, PA	Any payments to public employees:list	--	--	Lobbyist reports employer's exp. if known					yes
ENTUCKY	w/in 30 days adjournment	--	A	--	TC	--	--	--	A	--	TC			--
OUISIANA	----------													yes

STATE	PROHIBITIONS			ENFORCEMENT								
				WHO ENFORCES AND POWERS POSSESSED								
	Conting. Payment	Code of Conduct	Limits on payments to or for Public Officials	Atty. Gen.	Local Prosecu.	Secy. State	Secy. Senate/ Clerk House	Indepen. Agency	Fines	Prison	Citizen Complaint	Citizen Stand to Sue
ILLINOIS	yes	--	--		--	RR	--	--	yes prohibit from lobbying	yes	----------	
INDIANA	yes	--	--	--	--	RR	--		yes	yes		
	--	--	--	CP	--	--	--	--	yes	yes	--	--
IOWA	Legal, but must disclose on regis.	yes	only in certain categories; disclose all	--	--	--	RR	--	--	--	--	--
KANSAS	yes	yes	Disclose all; $100 limit if given to influence	--	--	RR	--	I,S	Class A misdemeanor		yes	--
KENTUCKY	yes	yes	--	RR	--	--	--	--	yes	yes	----------	
LOUISIANA	----------						RR		yes	yes	----------	

STATE	COVERAGE				REGISTRATION							
									Information on Registration		Up-dates	Notice of Term
	Lobby of Leg Branch	Lobby of Ex. Approv /Veto	Lobby of Ex. Branch	Lobby by Public Offic.	When	With Whom	By Whom*	Exceptions*	Lobbyist or Indivi.*	Employer or Princi.*		
AINE Ch. 15, ec. 311, t.seq.)	Yes	no	no	no	w/in 48 hrs. of employ. reg. is invalid 30 d. after adj.of sess.	Secy. of State	P,E	PO	JOINTLY LN,LA,EN,EA	C,D,S		yes
ARYLAND Act 40, ec. 5)	Yes	no	no	no	Prior to lobbying	Secy. of State	C,A	BD,I,PO	N,A,O,T,EN,EA,ET,S	N,A,LN,LA,D,S	yes	--
ASS. h. 3, ec.39-49	yes	yes	yes		w/in 1 wk (employer)or 10 d.(lobbyist) of employ.	Secy. of State	C,E,A	--	N,A,EN,EA,D,S	N,A,LN,LA,D,S		yes
	yes	yes	yes	--	--	--	--		See activity report		--	--
ICHIGAN 4.401)	yes	----------			yearly before lobbying	Secy. of State	P	AC,W	N,A,BA,EN,EA,EO,position held, OEN, OEA OEO, and N+A person who keeps accounts	--		----
INNESOTA enate & ouse Rules	yes	yes	yes	--	w/in 5 days of lobbying	Ethics Com.	P, R Indiv. spending $250/yr.	PO,I,O	N,A,BA,EN,EA,OEN, OEA,S. OC:N	--		----

STATE	Frequency	BY INDIVIDUAL OR LOBBYIST OR OTHER (DEFINE)						BY EMPLOYER, PRINCIPAL OR OTHER (DEFINE)						Repo: Publ.
		Source of Income	Expenditures Kinds of*	Expenditures Excep-tions*	Info. About*	Fin. Rel. w/Public Offic.	Other Info.	Source of Income	Expenditures Kinds of*	Expenditures Excep-tions*	Info. About*	Fin. Rela. w/ Public Offic.	Other Info.	
MAINE	w/in 30 d. of adj.	----------						--	L	--	I,P,A,S			
MARYLAND	On or before May 15	Total from each employer	A, plus office, meals, etc.	--	TC	--	D,S, OEN, person with accts.	--	L	--	T to each lobbyist		D,S,O	yes
MASS.	5/15,11/15 each year	--	AA	--	T,I over $35: PN, A,P,S,D	Benefic. of entertain,food & transp.	--	--	A	--	T,I over $50: PN,A,D, P,S	Beneficiaries of entertainment, food & Transp.		yes
	5/15,11/15 each year	--	--	--	--	--	--	Group not as part of organized effort, to lobby	employing lobbyists who spend over $250 per year,					yes
								$15 or more in 1 yr: CN,	AA	--	I, all: D,PN,P, S,A	Beneficiaries of entertain-ment, food &	O,S OC: N+A	
MICHIGAN	----------					Disclose transactions to Secy.State w/in 5 d.	----	----------				----------	----------	yes
MINNESOTA	By 15th of Feb.,Mar., Apr.,June, Dec.	$500 or more w/in 1 yr.: CN,CA,CG	A	--	TC (wait for forms)	Gifts, loans, to [illegible] or more-- itemize	same as							

STATE	PROHIBITIONS			ENFORCEMENT								
				WHO ENFORCES AND POWERS POSSESSED					Fines	Prison	Citizen Complaint	Citizen Stand. to Sue
	Conting. Payment	Code of Conduct	Limits on payments to or for Public Officials	Atty. Gen.	Local Prosecu.	Secy. State	Secy. Senate/ Clerk House	Indepen. Agency				
AINE	yes	----------		CP	--	RR	--	--	yes	no	----------	
ARYLAND	yes	--	--	--	CP	RR	----------		yes	yes	----------	
ASS.	yes	--	Disclose entertainment or travel for public officials	CP,I, CV		RR			yes	--	--------	
				CP,I, CV		RR			yes	--	--------	
ICHIGAN	yes	----------		CP					yes	yes	----------	
INNESOTA	yes	----------			----------			RR,A,I,S	?	?	yes	--

STATE	COVERAGE				REGISTRATION							
									Information on Registration			
	Lobby of Leg Branch	Lobby of Ex. Approv /Veto	Lobby of Ex. Branch	Lobby by Public Offic.	When	With Whom	By Whom*	Excep-tions*	Lobbyist or Indivi.*	Employer or Princi.*	Up-dates	Not of Ter
MISS.	yes	no	no	no	w/in 5 days employment & yearly	Secy.State	E - od paid lobbyists	I,O,BD, PO		N,A,OC-B,A,O LN,LA,LO,D,S	yes	
MISSOURI	yes	no	no	no	Before lobbying	Secy.Sen. + Cl.House	P,S	PO	N,BA,EN,EA,D	---	--	
MONTANA	yes	no	no	no	Before lobbying; reg.expires 12/31 of odd-numbered yrs.	Secy.State	P,E,A (PC only)	PO,ML, AC	N,A,BA,EN,EA, S + N+A references as to moral character	N,BA,LN,LA,S	yes	yes
NEBRASKA	yes	yes	no	yes	Biennially,at start of sess. in odd years	Clerk of Legis.	P, E	AC,W, I,BD	N,A,T,EN,S	N,A,T,LN,LT,LT	---	
NEVEDA	yes	---			Before lobbying	Legis. Counsel Bureau	R: in legis. bldg. only	PO,AC	N,A,EN,EA	---		
NEW HAMPSHIRE	yes	---			Before lobbying	Secy. State	P	--	N,A,O,EN,EA,EO,D,S	---		
NEW JERSEY (52: 13C-18) lobby law	yes	yes	---		Before lobbying,& w/in 30 days of employ.	AG	P,and anyone reimbursed $100 in 3-mo.per.	PO,O, AC	N,BA,O,EN,EA,EO, OEN,OEA,OEO,D,S, disclose contingent payments	---	yes	ye

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STATE	Frequency	BY INDIVIDUAL OR LOBBYIST OR OTHER (DEFINE)						BY EMPLOYER, PRINCIPAL OR OTHER (DEFINE)						Repor Publ
		Source of Income	Expenditures			Fin. Rel. w/Public Offic.	Other Info.	Source of Income	Expenditures			Fin. Rela. w/ Public Offic.	Other Info.	
			Kinds of*	Excep-tions*	Info. About*				Kinds of*	Excep-tions*	Info. About*			
ISS.	w/in 30 d. adjourn. of any sess.	anyone receiving money or thing to be used or spent in relation to legislation "show in detail" all money rec'd for lobbying	A	--	PN,PA,P, LO,D,bal. on hand & dispos. thereof	--	--	Employers and anyone who has spent money in relation to legislation --	A	--	I: PN,A	--	S,whether for or against	ye
ISSOURI	w/in 10 d. adjourn.; w/in 30d. start of sess.for interim	--	A	--	PN,P,A	--	S,P							y
ONTANA														y
EBRASKA	w/in 15 d. after ea. mo. leg. in sess.	A:CN,A,	A	P,I	PN,A	list loans to or for legislators	S	A: CN,A	A	P,I	PN,A	list loans to or for legis-lators	S	--
EVADA														
EW AMPSHIRE	w/in 30d. of sess.	Total for each employee	A	--	I: D,P PN,A	------								
EW JERSEY	Quarterly, by 10th day of quarter	--	----------				S,name of per-sons contacted							y

STATE	PROHIBITIONS			ENFORCEMENT								
	Conting. Payment	Code of Conduct	Limits on payments to or for Public Officials	WHO ENFORCES AND POWERS POSSESSED					Fines	Prison	Citizen Complaint	Citiz Stand to Sue
				Atty. Gen.	Local Prosecu.	Secy. State	Secy. Senate/ Clerk House	Indepen. Agency				
MISS.	yes								yes	yes		
MISSOURI							RR		yes	yes		
MONTANA	yes	yes		CV		RR			revocation of license yes	yes		
NEBRASKA	yes	yes		CP			Clerk of the legislative RR		yes	yes		
NEVADA									misdemeanor			
NEW HAMPSHIRE				CP					perjury			
NEW JERSEY	dis-close	yes		RR, I, CP, CV					misdemeanor			

STATE	COVERAGE				REGISTRATION							
									Information on Registration		Up-	Not
	Lobby of Leg Branch	Lobby of Ex. Approv /Veto	Lobby of Ex. Branch	Lobby by Public Offic.	When	With Whom	By Whom*	Excep-tions*	Lobbyist or Indivi.*	Employer or Princi.*	dates	of Ter
NEW JERSEY (cont'd) Campaign Finance Law	yes				yearly by 1/31	NJ Elec-tion Com.	2 or more persons acting jointly to lobby			appoint treasurer; designate depository		
NEW MEXICO	yes	yes			Prior to each sess. & before lobbying	Secy.State	C,P	PO,BD, AC	N,A,EN,EA,S			-
NEW YORK	yes	yes			yearly & before lobbying	Secy. State	C	BD	N,EN,S			ye
NORTH CAROLINA	yes				w/in 1 wk employment	Secy. State	P, E,A		N,A,O,EN,EA,EO,D,S	N,A,O,LN,LA,LO,D,S		
	yes	"influence legislation" (?)			Before lobby-ing,and yearly by 1/1	registration & financial report are combined -- see next page						
NORTH DAKOTA	yes				w/in 1 wk employment	Secy.State	P,E,A, (PC only)		N,A,O,EN,EA,OEN,OEA, D,S	N,A,LN,LA,LO,D,S	yes	y
OHIO	yes				w/in one wk. employment	Secy.State	E - of P or R	I, BD		N,A,O,LN,LA OC: N+A	yes	

STATE	Frequency	ACTIVITY REPORTS												Repo Publ
		BY INDIVIDUAL OR LOBBYIST OR OTHER (DEFINE)						BY EMPLOYER, PRINCIPAL OR OTHER (DEFINE)						
		Source of Income	Expenditures: Kinds of*	Expenditures: Exceptions*	Info. About*	Fin. Rel. w/Public Offic.	Other Info.	Source of Income	Expenditures: Kinds of*	Expenditures: Exceptions*	Info. About*	Fin. Rela. w/ Public Offic.	Other Info.	
NEW JERSEY	yearly by 3/1							$100+up: CN,CA,A	AA		D,PN,PA, P,ck#,A		N,A president y N,A treasurer account for all income & disb., opening balance, etc.	
NEW MEXICO														ye
NEW YORK	w/in 2 mo adjourn. of sess.								A		I: PN, P,A		S	
NORTH CAROLINA	w/in 30d. adjourn.		A		"detailed statement"				A		"Detailed statement"			ye
	yearly ok or before 1/1	person, group, etc. principally engaged in activity of influencing public opinion and/or legislation in N.C.						"itemize in detail" all income, sources from which rec'd; list all assets			list all lia-bilities		N,BA-main & all branch offs.; purpose of busi., names of offs., N & A each agent who will carry on activity	
NORTH DAKOTA														yes
OHIO	w/in 30 days adjourn.	individuals who receive money to be spent in relation to legislation						employers and any person, firm, etc. who spends money in relation to legislation						
		A:D,CN,A	A		PN,PA,P, L,D,BD				A		PN,A,P		S	

STATE	PROHIBITIONS			ENFORCEMENT								
				WHO ENFORCES AND POWERS POSSESSED					Fines	Prison	Citizen Com-plaint	Citizen Stand. to Sue
	Conting. Payment	Code of Conduct	Limits on pay-ments to or for Public Officials	Atty. Gen.	Local Prosecu.	Secy. State	Secy. Senate/ Clerk House	Indepen. Agency				
NEW JERSEY				CP				RR,I,CV,S, F	yes			
NEW MEXICO	yes					RR			petty misdemeanor			
NEW YORK	yes					RR			yes	yes		
NORTH CAROLINA						RR			yes	yes		
						RR			yes	yes		
NORTH DAKOTA	yes	yes		CP		RR			yes			
OHIO	yes			CP		RR			yes	yes		

STATE	COVERAGE				REGISTRATION							
	Lobby of Leg Branch	Lobby of Ex. Approv /Veto	Lobby of Ex. Branch	Lobby by Public Offic.	When	With Whom	By Whom*	Exceptions*	Information on Registration: Lobbyist or Indivi.*	Information on Registration: Employer or Princi.*	Updates	Note of Ter
OKLAHOMA Law & House & Sen.Rules	yes	no	no	no	Before lobbying	Cl.ofHouse Secy.Sen.	C or expense reimb.		N,A,age,EN, C			
OREGON 1973 & 1974	yes	yes			w/in 3 days lobbying	Ethics Com.	P; R+A	PO,ML, AC;persons rec'g no comp.&not spending over $50 in rptg.per.	N,A,T,EN,EA,ET,EO; business or employment relationship between L or E and legislator			
PENNSYLVANIA	yes				Before lobbying, and at each sess.	Cl.ofHouse Secy.Sen.	C	PO	N,BA,EN,EA,OEN,OEA,D		yes	
RHODE ISLAND	yes				w/in 1 wk employment	Secy.State	E,P,A= (PC only)	municipalities	N,A,O,EN,EA,C,D,S	N,A,LN,LA,LO,C,D,S	yes	y
SOUTH CAROLINA	yes				w/in 1 wk employment	Secy.State	E,P,A: PC only	municipalities	N,A,O,EN,S,D	N,A,O,M combined		y
SOUTH DAKOTA	yes				w/in 1 wk employment	Secy.State	E,P,A: (PC only)	public corps.	N,A,EN,EA,D,S,	N,A,LN,LA,LO,D,S	yes	y
TENNESSEE	yes				w/in 1 wk employment & at ea. reg.sess.	Secy.State	P=PC only;and anyone collecting or rec'g $ to be used in lobbying	AC,PO	N,A,O,EN,EA,EO,D,S			y
TEXAS	yes	yes			w/in 5 days	Secy.State	S-$200+ over per qtr; C or	PO,I	N,A,EN,EAS,M, source of contri. to lobbyist or employer of		yes	
UTAH		no law										

TATE	Frequency	BY INDIVIDUAL OR LOBBYIST OR OTHER (DEFINE)						BY EMPLOYER, PRINCIPAL OR OTHER (DEFINE)						Report Publi
		Source of Income	Expenditures Kinds of*	Expenditures Exceptions*	Info. About*	Fin. Rel. w/Public Offic.	Other Info.	Source of Income	Expenditures Kinds of*	Expenditures Exceptions*	Info. About*	Fin. Rela. w/ Public Offic.	Other Info.	
KLAHOMA														
REGON	Lobbyists: qtrly by 15th; employers: yearly by 1/15		A	P	T;I over $25:D,PN, P,A	Indicate legislative offls. who benefit from expen. $25 or more			A		T			yes
ENNSYL-ANIA														yes
HODE SLAND	w/in 30 d. adjourn.		A		I:PN,P,A									yes
OUTH AROLINA o form rovided	w/in 30 d. adjourn.		A		"detailed statement"				A		"detailed statement"			yes
OUTH AKOTA	w/in 30 d. adjourn.		A		D,PN,P				A		D,PN,P			yes
ENNESSEE														yes
EXAS	quarterly	on registration	A		TC-by lobbyist & others on his behalf or with his consent		S Most employers would report as individual registrants							yes

STATE	PROHIBITIONS			ENFORCEMENT								
	Conting. Payment	Code of Conduct	Limits on payments to or for Public Officials	WHO ENFORCES AND POWERS POSSESSED					Fines	Prison	Citizen Complaint	Citizen Stand to Sue
				Atty. Gen.	Local Prosecu.	Secy. State	Secy. Senate/ Clerk House	Indepen. Agency				
OKLAHOMA		yes							yes	yes		
OREGON	yes	yes						RR,I,S,CV other?	yes			
PENNSYLVANIA									yes	yes		
RHODE ISLAND	yes			CP		RR			yes			
SOUTH CAROLINA	yes					RR			yes	yes		
SOUTH DAKOTA	yes	yes		CP					yes			
TENNESSEE	must disclose								yes			
TEXAS	yes	yes		CP	CP	RR			felony			

STATE	COVERAGE				REGISTRATION							
									Information on Registration		Up-dates	Noti of Terr
	Lobby of Leg Branch	Lobby of Ex. Approv /Veto	Lobby of Ex. Branch	Lobby by Public Offic.	When	With Whom	By Whom*	Except-ions*	Lobbyist or Indivi.*	Employer or Princi.*		
VERMONT	yes				lobbyist-before lobbying; employer-w/in 48 hrs employ.	Secy.State	E,P		N,A,S	N,A,LN,LA,S		
VIRGINIA	yes				before lobbying and for ea. session	Secy. of Commonwealth	P-only in Capitol Bldg.	PO,CJ	N,A,O,BA,S,EN,EA,EO N&A person with financial accounts; C		yes	
WASH. STATE	yes	yes	yes	sep. rptg. proc.	before lobbying & ea.Jan.	Commission	C,A	AC,ML	N,BA,EN,EA,EO,D,C, contingent agreement, S;if employer is group, N&A members contributing over $500 in a year		yes	yes
Grassroots lobbying campaign	yes	yes	yes		w/in 30 d. start of campaign	Commission	S:$500 in a calendar qtr or $200 in any mo.		(person or group) N, A,O;OC:N,A,O. Persons managing or hired to assist. N,A,O Contributors: N,A, Amt S, Purpose all expenditures: TC		yes (on monthly rpts.)	yes
WEST VA. Senate Rules	yes				Before lobbying	Clerk of Senate	C,R, & anyone who cal lobbies on parties reg.basis	Politi-cal tingent	N,A,BA,EN,EA,OEN, OEA,S, detail con-agreements		yes	
WISC.	yes				Before lobbying & biennially	Secy.State	P	AC,BD			yes	yes
WYOMING	yes				Before lobbying	Legis.Serv. Agency	C & exp. reimb.	PO	N,BA,EN,EA			
DISTRICT OF COLUMBIA						DC Board Elections & Ethics	AC,PO	U.S. Sen. & Reps.				

STATE	ACTIVITY REPORTS													Rep Pub
	Frequency	BY INDIVIDUAL OR LOBBYIST OR OTHER (DEFINE)						BY EMPLOYER, PRINCIPAL OR OTHER (DEFINE)						
		Source of Income	Expenditures: Kinds of*	Exceptions*	Info. About*	Fin. Rel. w/Public Offic.	Other Info.	Source of Income	Expenditures: Kinds of*	Exceptions*	Info. About*	Fin. Rela. w/ Public Offic.	Other Info.	
VERMONT														yes
VIRGINIA	w/in 30 d. adjourn.	Total salary from each employer	A		TC				L		TC		S	yes
WASH. STATE	Lobbyists: qtrly,&wkly during sess. Employers: yrly by 1/31		AA	P-if not reimb.& unrelated to lobbying	TC;entertain:I by D,L,A, names of participants	I payments to or for legislator:D,A	S on lobbyist's report		L		TC	Detail PO given compensation; detail payees w/ financial rela. with public officials		
	monthly by 10th	AA: CN,CA,A	person or group AA		TC		update all. regis. info							ye
WEST VIRGINIA	w/in 30 d. adjourn. of sess.		A		TC				Lobbyist reports employer's lobbying expenses, if known.					ye
WISCONSIN	Lobbyists: monthly by 10th; Employers: 30 days after adjourn.		A	P	D,PN,P,A				L,and A:(PC only)					ye
WYOMING														
														y

STATE	PROHIBITIONS			ENFORCEMENT								
	Conting. Payment	Code of Conduct	Limits on payments to or for Public Officials	WHO ENFORCES AND POWERS POSSESSED					Fines	Prison	Citizen Complaint	Citize Stand. to Sue
				Atty. Gen.	Local Prosecu.	Secy. State	Secy. Senate/ Clerk House	Indepen. Agency				
ERMONT	yes			CP					Yes			
IRGINIA	yes	yes				CP			yes	yes		
'ASH. TATE	disclose on regis.	yes		CV,I				RR,I,A,S	yes			yes
'EST 'IRGINIA	disclose on regis.	yes	Lobbyist prohibited from paying membership or contribution to club or org. on behalf of Senator; lobbyist & their prin. must not allow Senators to charge amounts to their accts.				RR					
'ISCONSIN	yes	yes	Lobbyists prohibited from entertaining or furnishing gifts to public officials	CP	CV				yes	yes	yes	
'YOMING									yes			

COMMON CAUSE,
Washington, D.C., November 11, 1975.

HON. ABRAHAM RIBICOFF,
U.S. Senate, Russell Building, Washington, D.C.

DEAR SENATOR RIBICOFF: Common Cause commends you and the Senate Government Operations Committee for continued progress on lobby disclosure reform. The new bill, S. 2477, which you introduced on October 6th along with Senators Brock, Javits, Percy, Roth, Stafford, Chiles, Kennedy, and Muskie is the latest evidence of the Committee's commitment to pass a new lobby reform bill. However, we believe that key provisions must be strengthened, and other provisions added. Some of the major changes we believe are necessary include the following:

1. Coverage of Lobbying Directed at the Executive Branch

The definition of "lobbying" in S. 2477 fails to cover lobbyists' direct contacts with the Executive Branch. Although we are pleased that S. 2477 covers indirect lobbying of the Executive Branch (e.g. when organizations solicit their members to lobby), we believe that direct lobbying of the Executive Branch must also be covered. Of key importance is coverage of those who seek to influence policy decisions concerning expenditure of federal funds such as contracts, grants and awards. Recent revelations of the activities of the Northrop Corporation and other defense contractors in lobbying Pentagon officials dramatically underscore the need to cover those who lobby the Executive Branch.

2. Reporting of Lobbyists' Contacts

S. 2477 requires no disclosure of the particular congressional offices or Executive Branch officials that have been lobbied. Without such information, the public will have no idea which officials are the subject of the lobbyists' efforts. Such information should be required by S. 2477, whether it is obtained through records maintained by lobbyists, through logging by Executive Branch officials and Members of Congress, or through any combination of the two.

3. Qualification of Exemption for Individuals and Constituents Who Lobby

S. 2477 provides a total exemption from coverage for individuals who lobby on their own behalf and for those who contact any Senator or Representative from their home state. Obviously, the average citizen or constituent should not be obliged to register or report on their lobbying activities. But a major loophole in coverage is created unless these exemptions are qualified by an expenditure threshold so that individuals who spend substantial amounts will be covered.

Without such a threshold, people could avoid disclosure merely by claiming their lobbying activities were on their own behalf, regardless of how much money they spent. Qualifying the exemptions with an expenditure threshold is consistent with the legislation's primary purpose of disclosing the influence of those who spend significant amounts of money in the political process. This approach would in no way interfere with the right of an individual or constituent to petition.

In addition, we believe that the exemption for constituents should be restricted to lobbying of one's own Representative, not lobbying of all Representatives in the state delegation.

4. Strengthening of Requirements for Reporting of Contributor Information

S. 2477 requires no useful information on the sources of funding of lobbying organizations. Three changes would help insure that useful information would be provided:

(a) Inclusion of Contributor Information In Quarterly Reports Rather Than Registration Statements

The only information on contributors required by S. 2477 would be contained in the annual registration statements filed by lobbying organizations. We believe this information should instead be required as part of the quarterly disclosure reports so that the public can be regularly informed.

(b) Strengthening of Requirements for Reporting of Contribution Information

Under S. 2477 a lobbying organization is required to report only those contributors whose contributions constitute 5% or more of the organization's aggregate income during a 12 month period. We consider this 5% threshold to be so high as

to be meaningless. For example, if the 5% threshold were in effect, Common Cause, which receives about $5.6 million in annual income, would be required to report only those contributors who gave more than $280,000 during the year. This would have the effect of requiring Common Cause to disclose none of its contributors. We therefore urge the inclusion of a meaningful dollar threshold, such as the $101 disclosure threshold in the federal campaign financing law or the $500 figure presently contained in the 1946 Federal Regulation of Lobbying Act. Without such a threshold, it will often be impossible for the public or Members of Congress to know the real interests backing the activities of a particular lobbying organization.

(c) *Specification of Amount of Contributions as Well as Name of Contributors*

S. 2477 requires only the *identity* of those who contribute more than the threshold amount to a lobbying organization—and does not require disclosure of the exact *amount* of such contributions. We think it is essential that the public be provided with a precise figure in order to determine the extent of the support given by individual contributors.

5. Tightening of Requirements for Reporting of Gifts Made by Lobbyists

S. 2477 requires lobbyists to disclose only gifts to Members of Congress and only those individual gifts which exceed $50. We believe gifts to Executive Branch officials must also be disclosed. Also, the $50 threshold should be decreased, and a cumulative gift threshold should be added. A cumulative gift threshold would close the loophole which exists if one giver can provide unlimited gifts of $50 or less without any disclosure required.

S. 2477 does not require reporting of gifts for which a lobbyist is not reimbursed by his employer. If this major loophole is not eliminated, employers can simply pay their lobbyists at a level sufficient to enable the lobbyists to make gifts on their own without requiring reimbursement.

In addition, it is essential that spending by lobbyists on behalf of Federal officials, such as for entertainment, be reported, whether it is classified as a gift or not. Reporting of this common type of expenditure is not covered under S. 2477.

6. Require Individual Lobbyists Employed by Lobbying Organizations to File Their Own Reports

S. 2477 does not require individual lobbyists employed by lobbying organizations to file their own disclosure reports. The bill requires an organization to list its lobbyists, but provides for no breakdown of their individual expenditures and activities. In the absence of individual filings, there is no way to hold individual lobbyists accountable for accurately reporting their expenses and activities in working for their lobbying organization. As a result, the likelihood of compliance with the law is diminished. We believe it is essential to retain the principle of individual reporting which was established under the 1946 Act.

Common Cause urges the Committee to modify S. 2477 in accordance with these recommendations and to set a timetable which will allow the full Senate to act on the legislation this year.

Sincerely,

JOHN GARDNER,
Chairman.

Chairman RIBICOFF. Mr. Keller.

TESTIMONY OF ROBERT F. KELLER, DEPUTY COMPTROLLER GENERAL, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JACK WILD, ASSISTANT DIRECTOR, GENERAL GOVERNMENT DIVISION AND J. MICHAEL BURNS, ATTORNEY-ADVISER, OFFICE OF GENERAL COUNSEL

Mr. KELLER. Good morning, Senator.

Chairman RIBICOFF. Mr. Keller, we appreciate your coming here. I want to take this opportunity publicly thanking you for the excel-

lence of your report that was released this past weekend. Since I am concerned of a potential vote and want to give the three of us an opportunity to have some questions, I wonder if you would mind if your entire statement would go into the record as if read, so we could immediately go to the questions.

Mr. KELLER. Not a bit, Mr. Chairman. I am happy to offer the statement for the record.[1]

I would like to comment briefly. You requested us to look into the activities of the Clerk of the House and Secretary of the Senate, and the Department of Justice, in carrying out the 1974 lobbying law. We have found the enforcement weak by all concerned. We believe the bills you have under consideration would certainly improve the situation insofar as enforcement authority, investigative authority, are concerned. We believe that the present law should be changed; either that or you might as well take the 1946 law off the books.

Chairman RIBICOFF. Thank you very much.

Mr. Keller, what public good do you see coming from a stiffer law governing congressional lobbying?

Mr. KELLER. Speaking from an institutional standpoint and speaking as an individual who has worked for the Government for nearly 40 years, I think there should be a disclosure of the activities that are carried on by those engaged in lobbying. I certainly agree with earlier testimony that lobbying is not a dirty word. But lobbyists do represent special interests, and I think it would be well for the public to know that such type of interests are being represented, sometimes on a paid basis.

Chairman RIBICOFF. Do you think the lobbying laws should cover lobbying before Federal agencies?

Mr. KELLER. I have given that a good deal of thought, Mr. Chairman, and I have come to the conclusion that they should. I think you would have to define it carefully, such as the type of activities you wish to cover. But the Federal agencies, particularly in the executive branch, make many decisions in the form of rules and regulations, allocations and so forth which are sometimes just as important to private interest groups as the laws passed by Congress.

Chairman RIBICOFF. What effect do you think such provisions would have on decisions made by Federal agencies?

Mr. KELLER. That is a little hard to say. I work on the assumption that all decisions are made in an honest, forthright manner, and the fact that somebody inquires or advocates certain actions should not make any difference. But I think it is good government to have these types of activities made available to the public.

Chairman RIBICOFF. You state in your report that the Secretary of the Senate's acceptance of incomplete and late reports negates the reporting requirements. What action do you think the Secretary of the Senate and the Clerk of the House is authorized to take against incomplete or late reports? And why do you think they have not taken such action?

Mr. KELLER. Mr. Chairman, neither the Clerk of the House nor the Secretary of the Senate have any real enforcement powers under the

[1] See Mr. Keller's prepared statement on p. 173.

1946 act. The best they can do is send back the form to the person who registered and say it is incomplete, and then hope that he will complete it and send it back again. A great number of them were also late.

The only other alternative is to refer the case to the Department of Justice for prosecution. I think that prosecution would be a pretty difficult just for an incomplete report, unless it can be proven to be a willful violation.

Chairman RIBICOFF. Yet you state in your prepared statement that the Department of Justice records are not maintained in such a manner that meaningful statistics on lobby violations prior to March can be obtained. What is the problem and why do you think the Justice Department has been so indifferent towards——

Mr. KELLER. Beginning with the *Harriss* case in the Supreme Court in 1954, a lot of people just lost interest in enforcing the act. It is my understanding, at least since 1972, that the Department of Justice took no action to investigate violations of the act except for matters that were referred to them, of which there have been five. As I recall, none of those were referred by either the Clerk of the House or the Secretary of the Senate. Three, I believe, were referred by journalists, one by a Senator, and one from another source.

Is that right, Mr. Wild?

Mr. WILD. Two were from Members of Congress and three from journalists.

Chairman RIBICOFF. In other words, practically everyone who is involved, the Secretary of the Senate, Clerk of the House, and Justice Department, have been really indifferent with the whole problem of lobbying?

Mr. KELLER. I think that is a fair statement, Mr. Chairman.

Chairman RIBICOFF. Now according to your report, the two most commonly unanswered questions on the report filed with the Secretary of the Senate are question 13, section D, and question 15 in section E. These key questions require information on whom the lobbyist receives money from and how the lobbyist spent the money. Why do you think these are the questions that are generally unanswered?

Mr. KELLER. Mr. Chairman, I would like to ask Mr. Wild, who supervised the GAO report to answer the question.

Chairman RIBICOFF. Certainly.

Mr. WILD. We do not really have a reasonable explanation for that. We think it has to do with the fact that neither the Secretary of the Senate nor the Clerk of the House has ever returned the forms for completion. By the inactiveness of both of those officers to such compliance with the law——

Chairman RIBICOFF. In other words, it becomes important that whatever law we pass must make sure that the key information that you want, that that information is really answered.

Mr. WILD. There also has to be a mechanism established in the offices to which the forms are submitted to initiate followup action.

Chairman RIBICOFF. Who do you think should have the responsibility of enforcing a new lobby law? Should it be the Justice De-

partment, the Secretary of the Senate, the Clerk of the House, the new Elections Commission? Do you have any thoughts of where this enforcement procedure should be centered?

Mr. KELLER. The bills before you place the enforceability in the Federal Elections Commission. I do not have a good grasp as to whether this is the proper agency to administer it. As you know, the Commission is just getting started and will have a big job with the elections next year. I certainly think that as far as those who lobby for the purpose of influencing legislation are concerned, that the act should be administered by a congressional agency. Perhaps the Federal Elections Commission is one that could do it, or the Clerk of the House and the Secretary of the Senate.

I hope you will recognize that whoever you give it to must be given the enforcement powers to carry it out. That has been the weakness in the past.

Chairman RIBICOFF. Let me ask you—I am trying to put the burden on you—do you think the GAO might do this?

Mr. KELLER. I did not purposely avoid that in answering the previous question, Mr. Chairman. We have had this question put to us before, particularly with reference to bills on the House side providing for the Comptroller General to carry out the function. We have advised the committees we are not seeking the function. If Congress chooses to give it to us, we will do our best to carry it out.

Chairman RIBICOFF. You see, the Federal Elections Commission is new, they have to get organized and going. I am not so sure that this new agency could really do the job. You have the experience, you have the staff, you have the organization. You know what it is all about. So, in other words, while you are not seeking it, if it were given to you, the GAO would assume it?

Mr. KELLER. Of course.

Chairman RIBICOFF. Senator Percy.

Senator PERCY. I have no questions, Mr. Chairman. I would simply like to tell Mr. Keller that he could pass a message on to Mr. Staats. Congress has been lobbied for about 25 years, I think, on a project in Illinois. I have been lobbied for 9 years and I have supported the project. I asked for a GAO analysis, finally, of the project. I received the report yesterday. I find it has a 0.91 return on investment, which means that we never get back the money we put into it. As to certain recreation aspects of it, you could build swimming pools cheaper than you could go swimming in this potentially polluted water. I therefore spent until 7:45 last night calling everyone back home, saying I have withdrawn my support from the project and it will have to find some other alternative route of providing water and so forth.

I think facts many times help a great deal, and we could have saved a lot of energy and effort if I thought of asking for a GAO analysis of the project some time ago.

I appreciate that very much. You were not lobbying of course. You were just responding to a request for facts. I cannot tell you how

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grateful I am to have them. Though we were disappointed with the conclusions of the report, we certainly are going to be guided by its conclusions. Facts are what we need to legislate.

We are trying to make awfully certain that sources of information are as objective as they possibly can be, or if they do not have objectivity, that we know they lack that objectivity and discloses what their special interests are.

Mr. KELLER. Thank you, Senator. I will certainly pass that word along.

Senator PERCY. Thank you very much.

Chairman RIBICOFF. Thank you very much, gentlemen. I do appreciate your coming here.

Mr. Keller, we will submit additional questions to you and will include your response with your prepared statement and report furnished for the record. Again, my public thanks and appreciation for your report on the Federal Regulation Lobbying Act. We find it as a most useful document.

[The information referred to follows:]

Prepared Statement of Robert F. Keller

Mr. Chairman and Members of the Committee:

We are pleased to respond to your request to discuss the work done by the General Accounting Office concerning the monitoring of lobbying activities under the Federal Regulation of Lobbying Act.

Under the present law monitoring of lobbying is restricted to recordkeeping in the Offices of the Secretary of the Senate and the Clerk of the House. These records, which consist of registration statements and quarterly reports filed by lobbyists, are at their best inadequate. We found that almost 50 percent of the reports were incomplete and 60 percent were received late.

A primary cause for the lack of adequate monitoring of lobbying activities lies in the existing legislation. The act does not clearly define who must comply with the law's requirements, nor does it vest in the administering agencies -- the Clerk of the House and the Secretary of the Senate -- the types of enforcement authority that are normally given to government agencies to effect compliance with an act. The Regulation of Lobbying Act relies exclusively on the existence of potential criminal sanctions to achieve compliance.

In considering bills to amend the current law, we believe that careful consideration should be given to clearly defining who is a "lobbyist" and to providing the investigative and enforcement powers necessary for effective monitoring of lobbying activities.

THE FEDERAL REGULATION OF LOBBYING ACT

Mr. Chairman, on April 2, 1975, we issued our report to you entitled "The Federal Regulation of Lobbying Act --Difficulties in Enforcement and Administration." With your permission we would like to summarize the findings.

The Federal Regulation of Lobbying Act is, of course, not intended to regulate lobbying nor to restrict legislative activities of particular individuals. Rather, through registration, reporting, and recordkeeping requirements, the act seeks to ensure disclosure of the identity and financial interests of persons engaged in lobbying.

The act is administered by the Clerk of the House of Representatives and the Secretary of the Senate. Violations are misdemeanors punishable upon conviction by fines of not more than $5,000 or imprisonment for not more than 12 months, or both. Any person convicted is prohibited for a 3 year period from attempting to influence the passage or defeat of any proposed legislation. Violations of this prohibition are felonies punishable upon conviction by fines of not more than $10,000 or imprisonment for not more than 5 years, or both.

Since enactment in 1946, the act has been the subject of continual congressional scrutiny and generally has been found ineffective. Much of the criticism has focused on the difficulty of determining whether a person is "principally" engaged in lobbying activities and on the narrow definition of "lobbying" adopted by the Supreme Court, in the case of United States v. Harriss, 347 U.S. 612, limiting "lobbying" to direct communication with Members of Congress.

Persons who engage in lobbying for pay or for any consideration are required to file registration statements, in writing and under oath, with the Clerk of the House and the Secretary of the Senate. In additon, while a registrant's activities as a lobbyist continue, he must file with the Clerk of the House and the Secretary of the Senate a quarterly report detailing the money received and spent by him.

The act also requires that quarterly reports be filed with the Clerk of the House by certain persons who receive contributions or expend money for the purpose of influencing legislation. And persons who

solicit or receive contributions for lobbying purposes are required to maintain records of their financial transactions.

CLERK OF THE HOUSE OF REPRESENTATIVES

The Clerk of the House of Representatives has the greatest number of administrative responsibilities under the lobbying act. Paid lobbyists and those who receive or spend funds for lobbying purposes must register and file quarterly reports with him. The statements must be kept for 2 years and be made available for public inspection. The Clerk also is required to compile, jointly with the Secretary of the Senate, all information filed by lobbyists who register, as soon as practicable after the close of the calendar quarter to which the information relates. The information is then printed in the Congressional Record.

These are the only responsibilities or duties expressly imposed upon the Clerk. Furthermore, it is reasonable to conclude, based on their omission from the act, that Congress did not intend to grant additional powers to the Clerk. First, the Clerk apparently has no responsibility or power to investigate potential violations of the act's registration, recordkeeping, or reporting requirements. As a general rule, when the Congress intends to grant an official or an agency investigative authority, a specific provision is enacted granting it. The act does not contain such a provision.

Similarly, while the act imposes recordkeeping requirements on lobbyists, the Clerk of the House has no right of access to these

records. In most instances, the right to inspect records is contained in a specific provision in the legislation that requires the records to be maintained, and the lobbying act contains no access-to-records provision. However, since a criminal penalty is authorized for failing to comply with the act, the records presumably would be available for inspection by Department of Justice or Federal Bureau of Investigation officials in connection with investigations of potential criminal violations.

Finally, the Clerk has no enforcement powers, civil or criminal, under the act. As a general proposition, enforcement of the Federal criminal laws is a function of the executive branch, not the legislative branch. The Clerk may refer a case to the Department of Justice when he believes a person has violated one of the act's provisions. No specific statutory authorization would be necessary to do this. However, the Clerk has no other criminal law enforcement responsibilities under the act.

The Clerk also cannot seek a civil remedy in Federal court to compel compliance with the act. Here again, as a general rule, such authority is specifically authorized in legislation, but the lobbying act does not provide the Clerk this authority.

SECRETARY OF THE SENATE

Persons who lobby for pay, or for any consideration, must also register and file quarterly reports with the Secretary of the Senate. The Secretary compiles jointly with the Clerk of the House of Representatives

the statements filed by these lobbyists, which are published in the Congressional Record. In these respects, the responsibilities of the Clerk and the Secretary are identical. However, the Secretary has no other responsibilities.

In our review, we found that the Secretary does not monitor or investigate possible violations of the act. Registrations or quarterly financial reports are returned if not properly notarized or signed. However, no effort is made to insure that corrective action is taken and that the reports are resubmitted properly notarized and signed. Incomplete quarterly financial reports, other than those improperly notarized or signed, are not returned to the lobbyists for completion.

Although the act requires that quarterly reports be submitted by the 10th day of the following quarter, it does not authorize the assessment of penalties for late filings. The only consequence of a late filing is that the quarterly financial report will not appear in the listing published in the Congressional Record until the following quarter.

We found that many lobbyists' reports were filed late and/or were incomplete. We recognize that the act does not authorize the imposition of a penalty for incomplete or late reporting. However, acceptance of such reports frustrates the reporting requirements.

DEPARTMENT OF JUSTICE

As the agency created by the Congress to enforce the Federal criminal laws, the Department of Justice has primary responsibility

for investigating and bringing to trial violators of the act. The Department of Justice may initiate action on its own authority or it may proceed on the basis of referrals and complaints from Members of Congress, from the officials responsible for administering the act, or from private citizens. The decision whether to investigate or prosecute a violation of the act is largely within the discretion of the Department of Justice.

At present, the Department of Justice's role is limited to enforcement of the act on the basis of complaints received. The Department does not consider itself responsible for actively seeking out potential violators. In the Department's view, its responsibility is to investigate valid complaints and prosecute violators if the facts developed warrant prosecution.

Only five matters have been referred to the Department since March 1972. Of the five matters referred to the Department, two were initiated by Members of Congress and three were initiated by journalists. One case, initiated by a Senator, has been closed because of voluntary compliance by the lobbyists. The other four cases are still under investigation.

The Department has no specific written criteria for investigating a complaint. The actions taken on complaints or referrals vary depending on the merit of the complaint and the experience of the attorney handling the matter.

The Department does not monitor the registration or disclosure requirements of the act or evaluate the effectiveness or compliance with the act. The Department maintains no lobbying forms, filings, or other records beyond those associated with specific alleged violations. When a prospective lobbyist inquires as to whether he is required to register, he is advised that, if his activities raise doubts concerning the applicability of the act, he should probably register. The only other instance where the Department will request an individual or firm to register is when an investigation shows that the individual or firm is engaged in lobbying activities.

SENATE BILLS 774 AND 815

Mr. Chairman, you asked us to comment on whether Senate bills 774 and 815 would correct the deficiencies pointed out in our report. We have not had the opportunity to study these bills in great detail. However, we do believe that the approach taken in these two bills would be a great improvement over the existing legislation.

These bills would repeal the current Federal Regulation of Lobbying Act, and place administration of the act under the Federal Election Commission.

We have no special information bearing on the advantages or disadvantages of transferring the administration of lobbying to the Commission.

The bills would also eliminate the inadequacies noted in our review regarding access to records, investigative authority, and enforcement powers. Both bills specifically provide the Commission with these powers, among others, to insure effective administration of the act.

These bills also define a lobbyist more clearly. They provide that only those who receive or expend for lobbying purposes $250 or more during a calendar quarter, or $500 during four consecutive quarters, are "lobbyists" subject to the act's disclosure requirements. This definition serves to exclude from the application of the act those parties whose impact on the legislative process is likely to be insignificant.

However, one of the inadequacies of the current act's definition of a lobbyist has not been eliminated from S. 815. In that bill, lobbying must be a "substantial purpose of the activity or employment" of a lobbyist subject to the act. The "substantial purpose" language of S. 815 is almost as difficult from an enforcement standpoint as the "principal purpose" requirement of the current act and may cause similar problems. Elimination of this language from S. 815--it does not appear in S. 774--would simplify administration and enforcement of the act. We recognize, however, that there are important constitutional issues involved that the Congress will have to resolve.

Other significant points about these bills are:

--Both bills broaden the scope of lobbying activities subject to disclosure to include contacts with officers and employees in the

executive as well as the legislative branch. However, S. 774, unlike S. 815, would require high-level executive agency officials to record or log each oral or written communication from outside parties seeking to influence the policy-making process. In addition, S. 774 imposes criminal sanctions upon those who knowingly and willfully violate this provision.

--Senate bill 774 also establishes the Federal Election Commission as the primary civil and criminal law enforcement agency. Under its provisions the Commission is given the power to prosecute, defend, or appeal any criminal action to enforce the provisions of the bill. Violators can be prosecuted by the Attorney General or Department of Justice only after consultation with and the consent of the Commission. S. 815, on the other hand, requires the Commission to refer apparent criminal violations to the appropriate law enforcement authorities for prosecution. Under the latter bill, the Commission's authority to effect compliance is limited to informal negotiations or filing a civil action for relief.

PROCEDURES USED BY CERTAIN GOVERNMENT AGENCIES TO RECORD CONTACTS BY OUTSIDE PARTIES

With reference to the recording of communications received from outside parties as provided for in S. 774, we have obtained data on the procedures presently employed by the Department of Justice, Federal Trade Commission, Federal Energy Administration, and Consumer Product Safety Commission for recording contacts by outside parties.

Generally, we found that the four agencies implemented their procedures either to create a more open atmosphere, thereby promoting public confidence in the agency, or as a means to deter improper contacts by certain individuals.

None of the agencies have prescribed penalties or sanctions for those employees who violate the recordkeeping requirements. And only one of the agencies--the Consumer Product Safety Commission--made an attempt to monitor compliance with its procedures. The other agencies knew of no way their procedures could be monitored.

Department of Justice, Federal Energy Administration, and Federal Trade Commission

The procedures employed by Justice, the Federal Energy Administration, and the Federal Trade Commission generally require certain employees, who are contacted in person or by telephone, by persons outside the agency on cases or matters pending, to record such contacts in memorandum form. These memoranda are then placed in the relevant case file or subject matter file but then are not made available for public scrutiny until the record of the case is made available to the public if indeed the case reaches that state. For instance, the Justice Department does not make records of its cases available for public inspection.

We were informed that written communications, although not covered by the procedures, were placed in the applicable case file or subject matter file.

In addition to these procedures, the Federal Energy Administration requires its top level officials, Assistant Administrators and above, to record all meetings with outside parties concerning policy matters. Twice monthly these officials send a list of their meetings, the participants, and general subject matter, to a public information office where they are made available for public scrutiny.

Consumer Product Safety Commission

At the Consumer Product Safety Commission, private oral communications regarding matters of substantial interest are discouraged. Instead, employees have been instructed to request callers to arrange meetings to discuss the matter or to submit their views in writing. Unless there is a specific exception to its rule, public notice must be given 7 days in advance of all meetings and the public given an opportunity to attend. In addition, a summary must be prepared for each meeting, and that summary is placed in a public reading room together with summaries of telephone conversations.

Although not covered in the Consumer Product Safety Commission's rule, written communications concerning matters pending before the Commission are logged in at the office receiving the communication and then placed in the relevant file. Written communications not dealing with pending matters are placed in the public reading room together with the Commission's reply.

Mr. Chairman and Members of the Committee, this concludes our statement. We will be happy to respond to any questions you have.

REPORT TO THE COMMITTEE ON GOVERNMENT OPERATIONS UNITED STATES SENATE

The Federal Regulation Of Lobbying Act-- Difficulties In Enforcement And Administration

Department of Justice

Secretary of the Senate

Clerk of the House of Representatives

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

GGD-75-79

APRIL 2,1975

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-129874

The Honorable Abraham Ribicoff
Chairman, Committee on Government
Operations
United States Senate

Dear Mr. Chairman:

In accordance with your request of August 14, 1974, we examined certain enforcement practices under the Federal Regulation of Lobbying Act. This is our report on that examination.

We do not plan to release this report further unless you agree or publicly announce its contents.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

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COMPTROLLER GENERAL'S
REPORT TO THE COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE

THE FEDERAL REGULATION OF LOBBYING ACT--DIFFICULTIES IN ENFORCEMENT AND ADMINISTRATION

Department of Justice
Secretary of the Senate
Clerk of the House of
Representatives

D I G E S T

WHY THE REVIEW WAS MADE

Senator Abraham A. Ribicoff, Chairman of the Senate Committee on Government Operations, asked GAO to review certain enforcement practices under the Federal Regulation of Lobbying Act. This report covers:

--Enforcement practices of the Department of Justice since 1972.

--Administration of the act by the Secretary of the Senate and Clerk of the House of Representatives.

FINDINGS AND CONCLUSIONS

The Federal Regulation of Lobbying Act was enacted as part of the Legislative Reorganization Act of 1946. The act seeks to insure--through registration, reporting, and recordkeeping requirements--public disclosure of the identity and financial interests of persons engaged in lobbying.

The act was not intended to regulate lobbying or to restrict legislative activities of particular individuals. (See p. 1.)

Lobbying activities have been the subject of continual congressional scrutiny and, generally, the act has been found ineffective. Much of the criticism relates to the difficulty of determining whether a person is principally engaged in lobbying activities and the narrow definition given "lobbying." (See p. 2.)

Although the Clerk of the House and Secretary of the Senate have responsibility for administering the act, they do not have investigative authority, the right to inspect records, or enforcement power. (See pp. 1, 4, 5, and 6.)

Criminal sanctions authorized by the act are the responsibility of the Department of Justice. However, the act does not specifically authorize Justice to monitor lobbying activities. (See pp. 9 and 10.)

Clerk of the House of Representatives

Efforts to review the Clerk's administration of the act were limited to his public records. (See p. 5.)

GAO compared 50 quarterly reports filed with the Secretary of the Senate that were incomplete, including some which were received late, with corresponding reports filed with the Clerk. In most instances, reports filed with the Clerk were also incomplete and/or filed late. A review of prior quarterly submissions for the same 50 registrants generally showed the same incomplete reporting. (See p. 5.)

A check of 50 respondents' quarterly reports, randomly selected, determined that they were printed in the Congressional Record as required by the act. (See p. 6.)

Secretary of the Senate

The Superintendent of the Office of Public Records, Secretary of the Senate, deals with lobbying matters. The Superintendent said he is responsible for

--receiving lobbyists' registrations and quarterly financial reports and

--compiling a list of these reports, in coordination with the Clerk of the House, for printing in the Congressional Record. (See p. 6.)

The Superintendent does not monitor violations of the act. Incomplete reports are not returned to the lobbyists for completion, and there are no penalties for late filings. Although the act does not specifically grant authority to reject incomplete reports or penalize late reporting, acceptance of such reports negates the reporting requirements. (See pp. 7 and 9.)

In a review of 1,920 quarterly lobbying reports filed for the third quarter of 1974, GAO found that 48 percent were incomplete and 61 percent were received late. (See pp. 7 and 9.)

All 100 quarterly reports randomly selected by GAO had been included in the Congressional Record as required by the act. (See p. 9.)

Department of Justice

Justice's involvement begins once complaints are received. It does not consider itself responsible for actively seeking potential violators. (See p. 10.)

Since March 1972 only five matters have been referred to Justice. One matter has been closed; the other four are still under investigation. Meaningful statistics before 1972 cannot be determined. GAO was able to identify one other closed lobbying case reported between January 1968 and March 1972. (See p. 10.)

Justice does not monitor the act's registration or disclosure requirements or evaluate effectiveness or compliance with the act. A Justice official told GAO that the determination of whether a complaint should be investigated is based on the complaint's merit and the experience of the attorney

handling it. Justice has no specific written criteria on whether a complaint should be investigated. (See pp. 10 and 11.)

The only instance where Justice will request an individual or organization to register as a lobbyist is when an investigation shows that lobbying activities were engaged in. Justice advises prospective lobbyists who inquire about registration requirements to register. (See p. 11.)

MATTERS FOR CONSIDERATION BY THE COMMITTEE

Much of the past criticism of the act concerns the difficulty of determining whether a person is principally engaged in lobbying activities and the narrow definition given "lobbying." The Clerk of the House and the Secretary of the Senate do not have investigative authority, the right to inspect records, or enforcement power and therefore do not monitor the registration and reporting requirements.

If the Committee believes there is a need for stronger administration of the act, it may wish to pursue, with the Clerk of the House and Secretary of the Senate, the lack of (1) investigative authority, (2) the right to inspect records, and (3) enforcement power to determine whether the act should be strengthened. The Committee may also want to discuss with the Office of the Secretary and Clerk of the House followup efforts necessary to encourage complete and timely reporting.

CHAPTER 1

INTRODUCTION

On August 14, 1974, Senator Abraham A. Ribicoff, Chairman of the Senate Committee on Government Operations, requested that we review certain practices under the Federal Regulation of Lobbying Act. Specifically, we were to determine:

--The extent that filing requirements are met and the extent that reports are examined under the act. (See ch. 2.)

--The number of lobbying violations that have been reported to the Department of Justice. (See p. 10.)

--The extent that the Department of Justice enforces the act. (See p. 10.)

--The Department of Justice's efforts to evaluate the effectiveness of and compliance with the act. (See p. 11.)

--The criteria used by the Department of Justice to determine what organizations should be investigated. (See p. 10.)

--Whether the Department of Justice's criteria for requiring registration as a lobbyist are consistent. (See p. 11.)

The matters in this report have been discussed with Office of the Secretary of the Senate and Department of Justice officials who generally agreed with them.

The Federal Regulation of Lobbying Act (2 U.S.C. 261-70) was enacted as Title III of the Legislative Reorganization Act of 1946 (60 Stat. 812, 839). Despite the implication of its title, the act was not intended to regulate lobbying or restrict the legislative activities of particular individuals or organizations. Rather, through recordkeeping, registration, and reporting requirements, the act seeks public disclosure of the identity and financial interests of persons engaged in lobbying.

The act places its administration under the Clerk of the House of Representatives and the Secretary of the Senate and authorizes criminal sanctions to effect compliance with its provisions.

Violations of the act are misdemeanors punishable by fines of not more than $5,000 or imprisonment for not more than 12 months, or both. Any person convicted is prohibited for a 3-year period from attempting to influence the passage or defeat of any proposed legislation. Violations of this prohibition are felonies punishable by fines of not more than $10,000 or imprisonment for not more than 5 years, or both.

Since passage of the act in 1946, lobbying activities have been the subject of continual congressional scrutiny, and generally the act has been found ineffective. For example, a report by the House Committee on Standards of Official Conduct described the act as a thoroughly deficient law (H. Rept. 91-1803, 91st Cong., 2d sess. 1970). Much of the criticism of the act has focused on two issues affecting the determination of whether a particular individual or organization must comply with the law's disclosure provisions: the vagueness of the principal purpose 1/ requirement of the act and the narrow definition of "lobbying" adopted by the Supreme Court in United States v. Harriss (347 U.S. 612, 620 (1954)), limiting "lobbying" to direct communication with Members of Congress.

SCOPE OF REVIEW

We reviewed records and interviewed officials at the Department of Justice and the Office of the Secretary of the Senate. The Office of the Clerk of the House questioned whether it was authorized to grant us access to the House records related to the administration of the act, and as agreed with your office our review was limited to its public records.

1/The act states that those persons who by themselves or through any agent or employee or other persons directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid in: (a) the passage or defeat of any legislation by the Congress, (b) to influence, directly or indirectly, the passage or defeat of any legislation by the Congress.

CHAPTER 2

ADMINISTRATION AND ENFORCEMENT UNDER THE ACT

LOBBYISTS

The act imposes three requirements on lobbyists--registration, reporting, and recordkeeping. Registration statements are to be filed in writing and under oath with the Clerk of the House and Secretary of the Senate. A registration filing must include the

--registrant's name and business address,

--name and address of his employer and of the organization or individual on whose behalf he appears or works,

--duration of his employment,

--amount he is paid and is to receive and by whom he is paid or is to be paid, and

--amount allowed for expenses and the types of expenses to be included.

While the registrant's activities as a lobbyist continue, he must file with the Clerk of the House and the Secretary of the Senate a quarterly report, under oath, detailing the money received and spent by him during the preceding quarter in carrying on his work, the recipients and purposes of these expenditures, the names of all publications in which he caused to be published any articles and editorials, and the proposed legislation which he is employed to support or oppose.

The act also imposes reporting requirements upon certain persons 1/ who receive any contributions or expend any money for the purpose of influencing legislation.

Reporting requirements consist of filing a quarterly report with the Clerk of the House. These reports should contain

--the name and address of each person not mentioned in a previous report who contributed $500 or more;

--the total sum of the contributions made to or for such person during the calendar year;

1/Includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

--the name and address of each person to whom an expenditure of $10 or more has been made during the calendar year by or on behalf of such person and the amount, date, and purpose of the expenditure;

--the total sum of all expenditures by or for such person during the previous quarters of the calendar year; and

--the total sum of all expenditures by or for such person during the calendar year.

Certain persons who solicit and receive contributions are required to maintain records. Such recordkeeping should include

--a detailed and exact account of each contribution received,

--the name and address of each person making a contribution of $500 or more and the date of the contribution,

--each expenditure made by or for the organization or fund,

--the name and address of each person to whom an expenditure is made and the date of the expenditure, and

--the maintenance of detailed receipts for each expenditure from these funds exceeding $10 in amount.

These receipts must be kept for at least 2 years from the date the statement containing these expenditures is filed.

CLERK OF THE HOUSE OF REPRESENTATIVES

The act assigns the Clerk of the House of Representatives the greatest number of administrative responsibilities. Paid lobbyists and those who receive or spend funds for lobbying purposes must register and file quarterly reports with him. The act specifically provides that the Clerk must keep all statements filed for 2 years from the date of filing and that those statements must be made available for public inspection. It directs the Clerk to compile, jointly with the Secretary of the Senate, all information filed by lobbyists who register, as soon as practicable after the close of the calendar quarter to which the information relates. Once this information is compiled it is to be printed in the Congressional Record.

These are the only responsibilities or duties expressly imposed upon the Clerk of the House of Representatives. It seems reasonable to conclude that the Congress did not intend

to grant certain powers to the Clerk, based on their omission from the act. For example, the Clerk apparently has no responsibility or power to investigate potential violations of the act's registration, recordkeeping, or reporting requirements.

As a general rule, when the Congress intends to grant an official or an agency investigative authority, a specific provision is enacted granting it. The act does not contain such a provision.

The act similarly imposes recordkeeping requirements, but the Clerk of the House has no right of access to these records. In most instances the right to inspect records required to be maintained under a statute is contained either in a general access-to-records provision in an agency's enabling legislation or in a specific provision in the legislation that requires the records to be maintained. The Clerk of the House has no general authority to inspect records, and the act contains no access-to-records provision. However, since a criminal penalty is authorized for failing to comply with the act, the records would be available for inspection by Department of Justice or Federal Bureau of Investigation officials incident to investigations of potential violations of the act.

The Clerk has no enforcement powers, civil or criminal, under the act. Enforcement of the Federal criminal laws is a function of the executive branch lodged with the Attorney General and the Department of Justice, not with nonexecutive agencies. The Clerk may refer a case to the Department of Justice when he believes a person has violated one of the act's provisions. No specific statutory authorization is necessary for the Clerk to carry out this responsibility. However, the Clerk has no other criminal law enforcement responsibilities.

The Clerk cannot file a civil action in Federal court to compel compliance with the act. As a general rule, such authority is specifically authorized in legislation, but the act does not provide the Clerk this authority.

Efforts to review the Clerk's administration of the act were limited to his public records. We selected 50 quarterly reports filed with the Secretary of the Senate that were incomplete, including some which were received late, and compared them to the corresponding reports filed with the Clerk. In most instances the reports were comparable. We reviewed the quarterly reports submitted by the same 50 registrants for prior quarters and found that, of the 184 reports submitted, 143 were incomplete. The respondents generally failed to complete the same questions on each report filed.

We also randomly selected a sample of 50 respondents' quarterly reports from the Clerk's public records for the second quarter of 1974 and determined that they were printed in the Congressional Record listing as the act directed.

In 1970 the Clerk testified before the House Committee on Standards of Official Conduct. He reported that his office had conducted an in-depth review of second quarter 1970 lobbying reports. Of the 1,331 reports received during that quarter, 705 or 53 percent were returned for revision or resubmission. His testimony later disclosed that because he had no power to enforce the act his office was merely a depository for information for anyone who wanted to file. He added that he did not have the authority to question an individual who did not file and that the criteria in the act used to determine who should file was too vague.

The Clerk proposed 13 recommendations he believed would clarify or strengthen the act. The Legal Counsel to the Clerk told us that the Clerk's 1970 recommendations were still applicable.

SECRETARY OF THE SENATE

Persons who engage in lobbying for pay or for any consideration must register and file quarterly reports with the Secretary of the Senate. The Secretary compiles jointly with the Clerk of the House of Representatives the statements filed by these lobbyists; the compilation is then published in the Congressional Record. In these respects, the responsibilities of the Clerk and the Secretary are identical. However, the Secretary has no responsibilities requiring those who receive or expend money for the purpose of influencing legislation to file quarterly reports.

These are the only responsibilities the act specifically imposed on the Secretary of the Senate. The Secretary of the Senate, like the Clerk of the House, has no investigative and enforcement powers and has no authority to inspect records.

The Superintendent of the Office of Public Records, Secretary of the Senate, said he was responsible for (1) receiving lobbyists' registrations and quarterly financial reports and (2) compiling a list of these reports, in coordination with the Clerk of the House, for printing in the Congressional Record.

The Superintendent stated that his primary function is to act as a depository for filed reports so that inquiries can be answered. He said that no Senator has complained to the Office about illegal lobbying in the 5 years he has been

there but that, if such complaints were received, he would advise the Senator to contact the Department of Justice.

Lobbyists are considered active by the Superintendent if they filed a quarterly report during any of the previous four filing periods. As of January 28, 1975, there were 1,773 active lobbyists registered with the Secretary of the Senate. Of these, 131 lobbyists represented more than one employer while one lobbyist, a law firm, represented 25 employers.

The Superintendent does not monitor for any aspect of possible violations of the act. Registration or quarterly financial reports are returned if not properly notarized or signed. However, no effort is made to insure that corrective action has been taken. From the first quarter of 1971 through the second quarter of 1974, 26 quarterly reports that were sent back to lobbyists were not returned to the Secretary.

Incomplete quarterly financial reports, other than those not properly notarized or signed, are not returned to the lobbyists for completion. We reviewed 1,920 quarterly lobbying reports for the third quarter of 1974 and found that 917 quarterly reports, or 48 percent, were insufficiently completed. The following table shows the breakdown of the deficient reports.

Incomplete Responses to Third Quarter

1974 Lobbying Reports

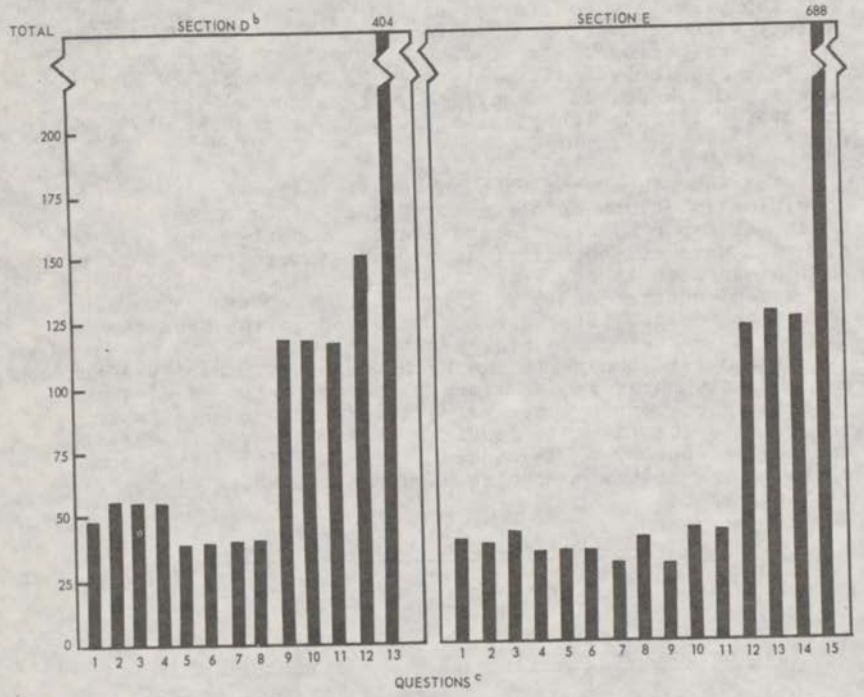
Range of incomplete questions per report	Number of reports incomplete
1 - 5	788
6 - 10	73
11 - 20	23
21 - 28	33
Total	917

The quarterly report is composed of two financial sections; one deals with receipts (section D) and one with expenditures (section E). (See app. II.)[1]

The following graph shows the number of incomplete responses to questions in these sections for the quarter ending September 30, 1974.

[1] Printed elsewhere in this hearing record; see p.

INCOMPLETE RESPONSES TO QUARTERLY LOBBYING REPORT FOR THE PERIOD ENDING SEPTEMBER 30, 1974 (Note a)



a 917 OF 1920 REPORTS EXAMINED WERE INCOMPLETE

b THE ANSWER TO QUESTION 14 IS DEPENDENT ON THE RESPONSE TO QUESTION 13. DUE TO THE NUMBER OF INCOMPLETE QUESTION 13 ANSWERS, WE WERE UNABLE TO DETERMINE THE INCOMPLETENESS OF QUESTION 14

c SEE APPENDIX II

Although the act requires that quarterly reports be submitted by the 10th day of the following quarter, the Office of Public Records has no authority to assess penalties for late filings. The only consequence of late filing is that the quarterly financial report will not be reflected in the listing published in the Congressional Record until the following quarter. The Secretary of the Senate and the Clerk of the House of Representatives have agreed to consider all reports received by the 20th day of the following quarter for inclusion in the Congressional Record.

We also reviewed the 1,920 third quarter reports for late filings and found that 1,175 reports, or 61 percent, were received at the Office of Public Records after the 10th day of the following quarter. The following table shows the degree of timeliness of those reports.

Timeliness of Third Quarter

1974 Lobbying Reports

Range of days late	Number of late reports	Average number of days late
1 - 10	654	4
11 - 20	194	14
Over 20	327	41
Total	1,175	

If a quarterly report was received too late to be included in the following two quarters' Congressional Record listings, it is not listed at all. According to the Clerk who is responsible for maintaining lobbying records, the number not included in the Congressional Record has averaged about 50 reports each quarter.

We randomly selected one hundred 1974 second quarter lobbying reports (including 25 reports received 20 or more days after the end of the quarter) to see whether they were included in the Congressional Record listings. All had been included.

We believe that although the act does not grant specific authority to reject incomplete quarterly financial reports or penalize late reporting, acceptance of such reports negates the reporting requirements.

DEPARTMENT OF JUSTICE

Any person who is convicted for violating the provisions of the act may be punished by fines of not more than $5,000

or by imprisonment for not more than 12 months, or by both. As the agency created by the Congress to enforce the Federal criminal laws, the Department of Justice is responsible for investigating and bringing to trial violators of the act.

The Department of Justice may proceed on the basis of referrals and complaints from the officials responsible for administering the act or from private citizens. The Department may also initiate action on its own authority. The decision whether to investigate or prosecute a violation of the act is largely within the discretion of the Department of Justice. The act does not specifically authorize the Department of Justice to monitor lobbying activities.

The Department of Justice's Criminal Division's Fraud Section has the responsibility for lobbying matters. Its involvement is primarily limited to enforcement of the act on complaints received. The Department does not consider itself responsible for actively seeking out potential violators. It considers that its responsibility is to investigate valid complaints and prosecute violators if necessary.

Records of the Department are not maintained in such a manner that meaningful statistics on lobby violations prior to March 1972 can be obtained. Criminal Division officials stated that, as of February 3, 1975, only five matters had been referred to the Department since March 1972. We were able to identify one other closed lobbying case reported between January 1968 and March 1972.

Of the five matters referred to the Department since 1972, two were initiated by Members of Congress and three were initiated by journalists. One case, initiated by a Senator, has been closed. The other four cases are still under investigation.

Department officials stated that the best sources for reporting violations would be Congressmen who have direct contact with lobbyists and the Clerk of the House and Secretary of the Senate since they receive the lobbyists' registration and financial reports. Neither the Clerk nor the Secretary had referred any violations since March 1972.

A Department of Justice official told us that between March 1972 and February 1975 all lobbying complaints made to the Department warranted and received investigation. He explained that the determination of whether a complaint should be investigated is based on the merit of the complaint and the experience of the attorney handling the matter. The Department has no specific written criteria on whether a complaint should be investigated.

The Department of Justice does not monitor the registration or disclosure requirements of the act or evaluate the effectiveness or compliance with the act. The Department maintains no lobbying forms, filings, or other records beyond those associated with specific alleged violations. When a prospective lobbyist inquires as to whether he should be registered, he is advised that, if his activities raise doubts concerning the applicability of the act, he should probably register. The only other instance where the Department will request an individual or firm to register is when an investigation shows that the individual or firm is engaged in lobbying activities.

MATTERS FOR CONSIDERATION BY THE COMMITTEE

Much of the past criticism of the act concerns the difficulty of determining whether a person is principally engaged in lobbying activities and the narrow definition given "lobbying." The Clerk of the House and the Secretary of the Senate do not have investigative authority, the right to inspect records, or enforcement power and, therefore, do not monitor the registration and reporting requirements.

If the Committee believes that there is a need for stronger administration of the act, the Committee may wish to pursue with the Clerk of the House and Secretary of the Senate the lack of (1) investigative authority, (2) the right to inspect records, and (3) enforcement power to determine whether the act should be strengthened. The Committee may also want to discuss with the Office of the Secretary and Clerk of the House the followup efforts necessary to encourage complete and timely reporting.

APPENDIX I

APPENDIX I

SAM J. ERVIN, JR., N.C., CHAIRMAN
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EDMUND S. MUSKIE, MAINE
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RICHARD A. WEGMAN
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON
GOVERNMENT OPERATIONS
SUBCOMMITTEE ON REORGANIZATION, RESEARCH, AND
INTERNATIONAL ORGANIZATIONS
(202) 225-2308
(PURSUANT TO SEC. 6, S. RES. 28, 93D CONGRESS, 2D SESSION)
WASHINGTON, D.C. 20510

August 14, 1974

Elmer B. Staats, Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Elmer:

This letter is to request the GAO's assistance in determining and evaluating certain enforcement practices under the Federal Regulation of Lobbying Act of 1946, which has not been amended since enactment.

The major requirements of the Act involve: a) the registration of lobbyists, b) the filing of reports by lobbyists, c) the filing of statements by individuals and organizations which collect or spend money to influence legislation, and d) the keeping of accounts of money received or spent for lobbying.

The absence of revision of the Act and the sparsity of case law in this area have resulted in conflicting views as to whether certain activities are subject to the Act.

Certain comments regarding the difficulty of enforcement of this Act have included the following:

a. Mr. Justice Jackson (Minority view from U.S. v. Harriss, ". . .it (the case) begins with an Act so mischievously vague that the government charged with its enforcement does not understand it, for some of its important assumptions are rejected by the Court's interpretation."
b. 1970, House Committee on Standards of Official Conduct: "(the law) has without exception been described to the Committee as a thoroughly deficient law."
c. 1970, W. Pat Jennings, Clerk of the House, told the House Committee, "I have no enforcement powers." (Nor does he have the authority to question an individual who does not file.)

The following questions I am asking the GAO to investigate are concerned with the extent of enforcement, filing and reporting under the Act:

1. To what extent are the filing requirements met under the Act?
2. How many violations are reported to the Justice Department?
3. To what extent does the Justice Department attempt enforcement of the Federal Regulation of Lobbying Act?
4. To what extent are reports examined under the Act?
5. What reports or determinations does the Justice Department make as to the effectiveness of the Act and compliance with it?

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APPENDIX I

Another area of my concern is in regard to the possible use of the Federal Regulation of Lobbying Act for political purposes:

1. What criteria does the Justice Department use to determine which organizations should be investigated for purposes of the lobbying act?
2. Are there consistent standards used by the Justice Department in requiring individuals or organizations to register as lobbyists?

It is my hope that the answers and evaluations to the questions which I have asked the GAO to investigate will serve as a valuable resource for future legislation in efforts to improve lobbying regulations.

Sincerely,

Abe Ribicoff
United States Senate

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-129874

June 13, 1975

The Honorable Abraham Ribicoff
Chairman, Committee on Government
Operations
United States Senate

Dear Mr. Chairman:

Enclosed is our response to the questions you submitted to us on April 23, 1975, subsequent to my testimony before your Committee on lobby reform legislation.

I hope that this will assist the Committee in its evaluation of the present act and the new legislation being considered.

Sincerely yours,

Deputy Comptroller General
of the United States

Enclosure

ENCLOSURE

Question 1. The Justice Department, according to your report, does not initiate investigations on its own of possible violations of the lobbying laws. It has only brought five prosecutions under the act since 1946.

Why do you think the Justice Department has been so inactive?

Response:

As indicated in my testimony before your Committee on April 22, 1975, certain provisions of the act, most notably the "principal purpose" requirement, are imprecisely drafted and their meaning is difficult to determine. In addition, the courts have imposed numerous limitations on the act's application. As a result, the successful prosecution of lobbying cases has been made extremely difficult, and officials at the Department of Justice may believe that it is better to obtain compliance through informal means than to attempt to prosecute violators of the act. In the one closed investigation that we reviewed, compliance with the act, not prosecution, resulted.

There may indeed be additional reasons for the Justice Department's inactivity in this area. However, we think that the causes suggested here explain, to a great extent, the small number of investigations and prosecutions undertaken by the Department.

Question 2. Do you think the agency responsible for enforcing the new law should be given criminal enforcement powers as well as civil enforcement powers?

Response:

We do not believe that the agency responsible for administering a new lobbying law should be given criminal enforcement powers. As a general principle, enforcement of the Federal criminal laws is a function of the executive branch, specifically the Department of Justice. We can see no reason for departing from this principle in the proposed lobbying legislation.

As stated in response to the prior question, we believe that the inactivity of the Justice Department in the enforcement of the Federal Regulation of Lobbying Act stems, in large part, from weaknesses in the act and from judicially imposed limitations on the law's application. In any new law that is enacted, these problems should be eliminated, thereby allowing the Justice Department to vigorously investigate and, when circumstances warrant, prosecute violators of that law.

ENCLOSURE

Question 3. Do you think the definitions of a lobbyist contained in S. 774 and S. 815 are workable, or would you support some other approach?

Response:

We think that the basic definition of a "lobbyist" contained in S. 774 and S. 815 constitutes a marked improvement over the existing law. In our opinion, by defining a "lobbyist" in terms of a specific dollar amount received or expended for lobbying purposes, the bills adopt a sound and workable approach to the problem of determining who must comply with the bills' recordkeeping, registration, and reporting requirements.

Unlike S. 774, however, S. 815 qualifies the definition of a "lobbyist" in a way that we believe may be unwise. Section 3(j)(1) of S. 815 provides that a person who receives $250 or more as compensation for employment or other activity during a quarterly filing period, or $500 or more during four consecutive quarterly filing periods, is a "lobbyist" when lobbying is a "substantial purpose" of that person's employment or activity. The "substantial purpose" requirement of S. 815 is similar to the "principal purpose" criterion of the existing law and, presumably, will create many of the same difficulties. Even as refined by the Supreme Court in United States v. Harriss, 347 U.S. 612, 621-23 (1953), the "principal purpose" requirement in §307 of the Federal Regulation of Lobbying Act has been criticized as so vague and ambiguous that it is not readily ascertainable who must comply with the law's provisions. Moreover, the requirement has been viewed as a means by which multi-purpose organizations and individuals who only lobby on a part-time basis can avoid compliance with the act.

Adoption of the "substantial purpose" limitation in S. 815 also appears to be unnecessary. In the Harriss decision, the Supreme Court described the reason for the enactment of the "principal purpose" requirement in the Federal Regulation of Lobbying Act:

> "The legislative history of the Act indicates that the term 'principal' was adopted merely to exclude from the scope of §307 those contributions and persons having only an 'incidental' purpose of influencing legislation." 347 U.S. at 622 (footnote omitted).

In S. 815, however, such a requirement seems unnecessary because the definition of a "lobbyist" to which the "substantial purpose" limitation

applies--those who receive more than a specified amount of money for lobbying purposes--provides a de minimis exemption and is a reasonable measure of the degree of effort devoted to lobbying activities. So long as the degree of effort measured in dollars exceeds the minimum amount prescribed in the bill, registration and reporting as a lobbyist seems justified, regardless of an individual's or organization's purpose.

Some may argue that, without a "substantial purpose" requirement, S. 774 and S. 815 are overly broad in their application. While we have no way of verifying or refuting this allegation, we believe that there are alternative means, other than the enactment of a "substantial purpose" requirement, by which the persons subject to the bills can be limited. One method would be to raise the dollar figures prescribed in the bills. Another alternative appears in S. 815, namely, authorizing the administrating agency to exempt certain persons from the requirements under conditions prescribed in the bill. We believe that these methods of limiting the bills' applicability are preferable to the enactment of a "substantial purpose" requirement, a provision so vague that administration and enforcement of the bills would be extremely difficult.

In addition to the basic definition of a "lobbyist" in S. 815, the bill contains a second definition. Section 3(j)(3) also defines a "lobbyist" as any person who engages in lobbying by communicating orally on eight or more occasions with one or more Federal officers or employees during a quarterly filing period. In our view, this definition creates two potential problems. First, we believe that monitoring oral contacts with Federal officers and employees would be a difficult, if not impossible, task. Second, the bill does not clearly define the types of oral communications to be covered. For example, as to contacts with the legislative branch, if a private citizen speaks with eight members of the congressional delegation from his home State, would he be a "lobbyist" within the meaning of S. 815? Because of these difficulties, we have serious reservations whether the number of oral communications with Federal officers and employees constitutes a workable definition of a lobbyist.

Question 4. As required by the act creating the Federal Energy Administration, you have been monitoring that agency closely for the last year.

Do you believe that the logging procedure FEA voluntarily adopted has improved the performance of that agency?

Response:

During the last year we have been closely monitoring the activities of the Federal Energy Administration and over that period have issued

several reports to Congress. Our work, however, has not been directed at determining the correlation between the agency's performance and the logging procedure, consequently, we are not in a position to adequately respond to this question.

Question 5. Were you able to determine whether the logging provisions of the FEA, FTC, and CPSC were burdensome to the employees?

Were you able to determine if employees were actually following the regulations?

Response:

As requested by the Committee, our work concentrated upon identifying the logging procedures being used by the agencies and did not include substantial interviewing of agency employees. Of the agency officials with whom we discussed logging procedures, however, none thought that they were burdensome.

A cursory review at CPSC and FEA indicated that for the most part the employees were following their agency's regulations. However, it would be extremely difficult to determine instances where an employee failed, either by oversight or willful intent, to log a communication.

LOBBY REFORM LEGISLATION

WEDNESDAY, MAY 14, 1975

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met at 10:04 a.m., in room 3302, Dirksen Senate Office Building, Hon. Lee Metcalf presiding.

Present: Senators Metcalf and Percy.

Staff members present: Richard Wegman, chief counsel and staff director; Eli E. Nobleman, counsel; Paul Hoff, counsel; Marilyn A. Harris, chief clerk; and Elizabeth Preast, assistant chief clerk. Also present: E. Winslow Turner, chief counsel, Subcommittee on Reports, Accounting, and Management.

Senator METCALF. The committee will be in order.

This will be a continuation of the hearings on the Public Disclosure of Lobbying Act.

We have a distinguished group of witnesses here today. Our first witness scheduled today was Congressman Railsback from Illinois, who has a similar bill in the House of Representatives.

Normally in accordance with protocol, we would call him first, but since he is not here, and we are already 4 minutes late in starting the hearing, we will call the representatives of the AFL–CIO.

TESTIMONY OF KENNETH A. MEIKLEJOHN, LEGISLATIVE REPRESENTATIVE AND KENNETH YOUNG, ASSISTANT DIRECTOR, LEGISLATIVE DEPARTMENT, AFL–CIO

Senator METCALF. I had looked forward to having Andy Biemiller, an old friend, here. I have not seen Andy for quite a while. He must be lobbying at a distance or something.

Mr. YOUNG. Mr. Chairman, Andy became sick yesterday, and he was looking forward to coming up here today.

Senator METCALF. Sick, no. He woke up this morning and saw such a nice day and he is working on the roses. I do not blame him, I would be too.

It is a great pleasure to have you here. If you have a statement, go right ahead with it.

Mr. YOUNG. Mr. Chairman, my name is Kenneth Young. I am the assistant director of the AFL–CIO in the department of legislation.

With me is Mr. Kenneth Meiklejohn, who worked with the director of our department, Mr. Biemiller, in analyzing the legislation.

With your permission we would like to file our statement for the record, and then Mr. Meiklejohn will summarize what we are saying. After that, I would like to make a few comments.

Senator METCALF. Thank you very much. The statement will be incorporated in the record as being read.

[Prepared statement of Mr. Biemiller follows:]

STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS
ON S. 815 AND S. 774 THE "OPEN GOVERNMENT ACT OF 1975"

May 14, 1975

The AFL-CIO appreciates this opportunity to present to the Committee on Government Operations our views on S. 815 and S. 774, the so-called "Open Government Act of 1975".

These hearings and the study being given to these bills by this Committee are of great importance. They deal with the role played by individuals and organizations, business, farm, labor, civic, social and the agencies of Government itself, in the formulation and effectuation of policies and programs of the Federal Government. In a governmental system such as ours where the people, not the Government, are supposed to rule, the process through which individuals and organizations make their views and interests known to Members of Congress and the Executive Branch must be kept open and viable.

This process finds specific expression in the First Amendment to the United States Constitution. Together with the freedom of speech and press, and the right of peaceable assembly, this Amendment guarantees "the right of the people . . . to petition the Government for a redress of grievances". This right clearly comprehends not only the right of the individual to come to Washington to bring matters of personal concern to the attention of members of the Congress or appropriate officials in the Executive Branch but also the right to have this done in an organized way in association with others -- in other words, through lobbyists and lobbying. Clearly, the bills before you must be considered in the light of their possible impact upon this most basic of our constitutional freedoms.

Another of our constitutional liberties is also involved in the consideration of legislation to regulate lobbying such as S. 815 and S. 774. There is a right of privacy with which the Federal Government ought not to interfere which is guaranteed by the Fourth Amendment's protection of the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures". Congress has the power to obtain information about the activities of lobbyists and to require them to register and to keep records, but these regulations must be within constitutional limitations and must not be such as actually to frustrate the activities themselves.

In our judgment, S. 815 and S. 774 would, if enacted, go far toward accomplishing such a result.

It is important to keep in mind, though some of the advocates of the bills before you would seem to be oblivious of the fact, that lobbying is not free from regulation at the present time. When Congress passed the Legislative Reorganization Act in 1946, it included in that Act -- Title III -- the Federal Regulation of Lobbying Act. Registration of lobbyists, keeping of records and quarterly reports of their income and expenditures for lobbying purposes are required by that Act. Senator Stafford, one of the principal sponsors of S. 815, has said that "there have been vast changes in the way lobbyists operate to influence the course of government and a vast change in their impact on the government." From where I sit, however, as a former Member of Congress and for nearly twenty years as Director of the Department of Legislation of the AFL-CIO, the more lobbying seems to change the more it really is the same and its impact on government is little different from what it has always been.

I do not mean to imply that there is no room for improvement in the present Federal Regulation of Lobbying Act. It is undoubtedly true that many individuals and organizations that are undeniably attempting to influence legislation before Congress do not register at all under the present law. The National Association of Manufacturers for many years refused to register under the Act, even though it lost a fight in the United States Supreme Court for failing to do so, and only recently came into compliance with the law. Other organizations maintained for years, without successful challenge, that they engage in only educational activity beyond the reach of the Federal statute. There are loopholes in the law, as experience has shown, and undoubtedly it would be well to close those loopholes. It might also be well to extend the present statute to cover so-called "grass roots" lobbying, the stimulation of "spontaneous" public opinion, and to cover lobbying carried on by the executive departments and the Federal regulatory agencies. We have long supported such improvements in the law and the AFL-CIO will continue to do so.

Some such provisions are in the bills before you, but their main provisions are those that would purport to tighten up the definitions of "lobbying" and

"lobbyist", that set forth the requirements for filing "notices of representation", for maintaining financial and other records of lobbying activity, and for filing quarterly reports of each lobbyist's activities, and that transfer administrative and enforcement responsibilities from the Clerk of the House of Representatives and the Secretary of the Senate to the newly established Federal Election Commission. Both S. 815 and S. 774 have provisions dealing with these matters that are substantially similar. Since S. 815 seems to be the principal measure before the Committee, however, I shall direct my comments particularly to this bill.

First, I should like to make one or two general remarks. The basic problem with S. 815 is, I believe, that its drafters appear to have known little or nothing about lobbying or lobbyists. They appear to have known little or to have deliberately ignored the role that lobbyists and lobbying play in the legislative process or the manner in which they carry out this role. What lobbyists do is to provide facts. Without the information they provide, Congress more often than not would find itself proceeding blindly and without appreciation of the objectives and the possible consequences of the legislation they are considering.

It is very likely that we in the AFL-CIO understand this better than the drafters of S. 815 and the other bills before you because, for the most part, the causes in which we are interested are the causes in which we and the people generally believe, such as fair wages and working standards, a decent standard of living for all, a job, pensions for old age, decent homes and a system of national health insurance, and fairness in all things without discrimination on account of race, creed, color, age, sex, or national origin. On these matters and on many more the AFL-CIO has had the long-standing and widely recognized role of "people's lobby", even though many of these issues are of no direct concern to the trade union movement as such. This is a tradition we have adhered to going back to the early nineteenth century when organized labor was among the first to demand compulsory public education and abolition of child labor.

As a matter of fact, Mr. Chairman, it is doubtful whether very many of the social, economic and political advances of the past forty years could have been achieved without the aid of the labor movement and other civil liberties, civil rights and public interest groups. We have been part of the legislative process during this period, an integral part of that process, a very necessary part. We urge you very strongly not to abrogate that part.

Unfortunately, we believe that if S. 815 were enacted into law, the necessary role that labor unions play in the legislative process would be seriously damaged. Since its enactment, the Regulation of Lobbying Act has been scrupulously observed by the AFL-CIO and, so far as we know, by all of our affiliated unions that maintain lobbying services and lobbyists in Washington. Our legislative representatives are registered with the Secretary of the Senate and the Clerk of the House of Representatives; they file quarterly reports of their salary and expenses. Their interests and activities on behalf of the programs and policies of the AFL-CIO are well known to all on Capitol Hill. Although we have carefully studied the provisions of S. 815, we do not believe that the additional details required by this bill would add substantially to the public's understanding of the role of lobbying in the government process.

Admittedly, there are groups and individuals that do not understand the obligation to operate in the open as we do. We understand the demand this leads to for more effective lobbying regulation by the Congress. This demand should not be allowed, however, to lead the Congress to fasten on lobbyists and the lobbying process requirements that could bog them down in needless record-keeping and burdensome reports. Many of the provisions of S. 815, it seems to us, would have this effect.

S. 815 defines the term "lobbying" as meaning any "communication, or the solicitation or employment of another to make a communication, with a Federal officer or employee (including any officer or employee in the legislative or executive branch of the Federal Government) in order to influence the policy-making process". The term would not, however, include testimony made part of the official record of a Congressional committee or of a Federal executive agency, statements by Federal, State or local government agencies acting in

their official capacities, newspapers, magazines, radio or television broadcasts, or books published for the general public, except "a publication of a voluntary membership organization". Nor would it include communications or solicitations by candidates for Federal office, or communications of national political parties or units thereof or of any State, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States or units thereof. By making an exeption from these exclusions in the case of publications of voluntary membership organizations, the bill would subject such publications and their editorial staffs to the detailed registration, record-keeping and reporting requirements set forth elsewhere in the bill. Would the AFL-CIO News have to drop all references to the progress of legislation of interest to union members or refrain from comment on developments in Congress or the Federal agencies in order to exclude itself from the bill's requirements? Such a choice would be both burdensome and discriminatory. We do not believe it should be forced on voluntary organizations like the unions in the AFL-CIO, any more than it should on any other such organization.

The bill defines as a "lobbyist" any person who engages in lobbying and who (1) receives compensation of at least $250 in a quarterly filing period, or $500 during four consecutive quarterly filing periods, "when lobbying is a substantial purpose of such employment or activity"; (2) spends for lobbying, exclusive of personal travel or lodging expense, at least $250 during a quarterly filing period, or $500 during four consecutive quarterly filing periods; or (3) "in the course of lobbying during a quarterly filing period, communicates orally on eight or more separate occasions with one or more Federal officers or employees." Even if S. 815 were enacted into law, the use of the term "substantial purpose" as the basic standard of coverage under clause

(1) would appear to leave this clause almost as ineffective and uncertain as the "principal purpose" language of the present law. Under clause (3), by contrast, any business man or labor union member standing in the Senate Reception Room or off the House floor who conversed with "eight or more" Congressmen or staff members about a matter then being discussed on the floor might suddenly become a "lobbyist" and subject to all the registration, record-keeping and reporting requirements under the bill. This type of dragnet requirement seems to us not only silly but dangerous; if it means what it says it is not administrable or enforceable; and it would be highly restrictive of the ordinary and frequent exchanges of information and views which are part of the everyday relationships between Congressmen and the public.

Section 4 of S. 815 provides that lobbyists must file "notices of representation" not later than fifteen days after becoming a lobbyist. Such notices must contain information identifying the lobbyists and, "so far as practicable," each person on behalf of whom he expects to perform his services, and a description of the financial terms under which he is employed or retained; also each aspect of the policymaking process which the lobbyist expects to seek to influence, including any Congressional committee or Federal agency or any Federal officer or employee "to whom a communication is to be made," and the identity of any person who is expected to be acting for such lobbyist, including the terms of such representation. The notice would state, "in the case of a voluntary membership organization, the approximate number of members and a description of the methods by which the decision to engage in lobbying is made." While much of this information is already called for under the Federal Regulation of Lobbying Act, the information the bill seeks from voluntary membership organizations as such is neither necessary nor appropriate. In our judgment, it constitutes a wholly unjustified intrusion into the internal affairs of such organizations.

Section 5 of the bill specifies the records of lobbying, financial an otherwise, which must be maintained by a lobbyist. These records must be maintained for a period of two years and be available for inspection. They must include both the total income received by the lobbyist as well as the amount of such income attributable to lobbying; the identity of each person from whom income for lobbying is received; the lobbyist's total expenditures, including those attributable to lobbying and an itemization of any expenditure exceeding $10, the person to or for whom made, the date of such expenditure, and a description of its nature; expenditures for employment of any person so engage in lobbying and the amount received by each such person to employed; and expenditures relating to research, advertising, staff, entertainment, offices, travel, mailings, and publications used in lobbying. The detail is endless; the records will be voluminous; whether Congress or the public will know any more about the manner in which lobbyists carry on their work and accomplish their objectives is at the very best conjectural.

Section 5 provides that in the case of voluntary membership organizations, records of contributions received during any quarterly filing period from any member must be kept if such member's contributions are in excess of $100 during that period alone, or during that period combined with the three immediately preceding such periods. Here, again, is a totally unjustified intrusion into the internal affairs of voluntary membership organizations, such as unions and various public interest groups. What relevance does the information sought to be put on record have to do with the regulation of lobbying?

Section 6 of S. 815 requires every lobbyist to file a report of his lobbying activities within fifteen days after the last day of any quarterly period in which he engaged in such lobbying. These reports also call for a great deal of detail much of it is similar to

that called for in notices of representation and the records lobbyists are required to keep. In addition, the reports must include information on the following:

"each aspect of the policy making process the lobbyist sought to influence during the period, including bill, docket, or other identifying numbers where relevant;"

"an identification of each Federal officer or employee with whom the lobbyist communicated during the period to influence the policymaking process;"

"an identification of the subject matter of each oral or written communication which expresses an opinion or contains information with respect to the policymaking process made by the lobbyist to any Federal officer or employee, or to any committee, department, or agency;"

"an identification of each person, including other lobbyists, who engaged in lobbying on behalf of the reporting lobbyists during the filing period, including--

"(1) each decision of the policymaking process such person sought to influence, including bill, docket, or other identifying numbers where relevant; and

"(2) each Federal officer or employee with whom such person communicated in order to influence the policymaking process;"

"a copy of any written communication used by the lobbyist during the period to solicit other persons to lobby, an estimate of the number of such persons to whom such written communication was made, and an estimate of the number of such persons who engaged in lobbying;"

"a description of the procedures, other than written communications used by the lobbyist during the period to solicit other persons to lobby, an estimate of the number of such persons solicited, an estimate of the number of such per-

sons who engaged in lobbying, the specific purpose of the lobbying, and the Federal officers or employees to be contacted."

The volume of detail which these paragraphs of the bill's reporting requirements is almost too voluminous to comprehend. The burden of compiling it and putting it into proper form to be reported could well be such as virtually to preclude any opportunity for the lobbyist to engage in lobbying himself. But perhaps the real problem with these paragraphs is that in a very real sense the information they seek to have reported is unnecessary and irrelevant. If the effort being undertaken in this legislation were to spell out certain kinds of lobbying that could be engaged in while others could not, these paragraphs might make some sense. Then the details of activities in which lobbyists engage might have some relevance, might be appropriate. But in a bill which seeks to reveal, not to regulate, the activities these provisions seek to have made public are meaningless and silly.

For an organization like the AFL-CIO, which is interested in most legislative matters before the Congress, compliance with the reporting requirements of S. 815 would be a virtual impossibility. Many times the staff we now have would be required to keep tract of the many persons who are working and the varied measures upon which we and they are working at any one time; many more would be needed to keep the records required by the bill. I have heard this bill described as the "Full Employment for Secretaries" bill, and that might well be a very accurate description of its real effects. If this bill is to be a useful amendment to or substitute for the present Federal Regulation of Lobbying Act, it will have to be very much simplified and its provisions reoriented toward compelling the reporting of the information already called for by that Act.

But there is another very disquieting aspect of this legislation. The bill would, as I have already pointed out, transfer the responsibility for administration and enforcement of its requirements from the Clerk of the House of Representatives and the Secretary of the Senate where it resides under the Federal Regulation of Lobbying Act to the new Federal Election Commission. Broad investigatory powers would be vested in the Commission, including the power to issue subpoenas enforceable in the Federal District Courts. The Commission would have the authority to impose additional requirements on lobbyists and modify those set forth in the bill as it sees fit. The Commission would be empowered to issue advisory opinions upon written request by any person and would have broad powers of enforcement of the provisions of the bill, including the authority to bring civil actions in the Federal District Courts for permanent or temporary injunctions, restraining orders or other orders.

In addition, any lobbyist "who fails to comply" with the notice of representation, record-keeping or reporting provisions of the bill "shall be fined not more than $1,000 and be required to fully comply, retroactively or otherwise," with such provisions. Knowing and willful violations of these provisions would result, upon conviction, in a fine of not more than $10,000 or imprisonment for not more than two years. Knowing or willful falsification of any notice of representation or report filed under the bill would subject the violator to a fine of not more than $10,000 or imprisonment for not more than two years, or both. These are extremely heavy penalties for what under the bill amount to record-keeping or reporting violations, particularly when one considers the detailed record-keeping and reporting that the bill requires.

As you can see, Mr. Chairman, I do not see very much good coming out of measures like S. 815 or S. 774. These bill go at the problem of regulating the lobbyists and lobbying in the wrong way. The remedies sought would, I am convinced, turn out to be worse than the evils they are designed to correct.

Finally, I would like to say a word about the lobbyist and the work he does. Some think that the job of representing labor in the Halls of Congress is an easy task; these individuals know little of the long and often agonizing hours of study, analysist, vote counting, contacts that make up the daily rounds of the public interest lobbyist. The Members of Congress and their staffs should know the importance of the contributions the lobbyists often make to the accomplishing of their legislative and political objectives, but all too often shy away when talk of their influence begins to be heard.

I submit, Mr. Chairman, that the lobbyist deserves better than the onerous obligations which S. 815 or S. 774, or other similar bills, would impose upon him. I hope your Committee will think better of this enterprise and will proceed to strengthen the existing law by closing loopholes, providing for consistent and realistic enforcement and extending it to so-called "grass roots" lobbying. Such action would, in our opinion, achieve what the sponsors obviously want - to give the public the knowledge and information it should have, to preserve the constitutional right of the people to petition the Congress and to end those abuses which have occured because the present statute is weak and unenforced. Both as lobbyists and citizens those, we believe, are worthy objectives and simple to achieve without engaging in the destructive methods of these bills.

Mr. MEIKLEJOHN. Mr Chairman, I will not take a great deal of time to summarize it, because I think both of us feel that the problem here can best be developed in the course of questions and answers with discussion back and forth. What we have tried to do here is to set out some of the main principles that we think need to be taken into account in considering this legislation. My summary of that will be very brief. It does not need to take a great deal of time to discuss the bills, of which we understand, S. 815 and S. 774 are the principal measures before the committee.

We start off, first, by saying in our statement that there are obvious constitutional problems in connection with the regulation of lobbying or the regulation of reports by lobbyists.

We have, as you know, the first amendment which specifically protects the people's right of petition to the Government, both the executive branch and the legislative branch.

There is also the protection set forth in the fourth amendment to the constitution which protects a person's privacy and so on against unreasonable searches and seizures.

While this clearly means that Congress can inquire into the activities of lobbyists, they cannot do such as to, in effect, invade their privacy.

We would like also to call attention to the fact that we do already have on the statute books a law dealing with the subject of lobbying.

The Federal Regulation of Lobbying Act was passed in 1946 as part of the Legislative Reorganization Act of that year. That law has been on the statute books. As far as the AFL–CIO is concerned, we have always registered under that law. We have always reported under that law in accordance with the provisions of that law. The fact that we have so reported our activities on behalf of the interests of labor is well known all over Capitol Hill. The fact that we lobby and who lobbies on our behalf, is a matter with which no one can claim they have no knowledge.

Our activities are an open book. We plan to keep it that way. We have never had any complaints about the law in that respect.

We do think there are certain things that could be improved with regard to that law. The law has been ignored to a considerable extent by many groups. It has not been enforced. We believe there are loopholes in the law that should be closed.

For example, it might be well to extend the statute to apply to so-called grass roots lobbying, the stipulation of spontaneous public opinion messages to Congress and so forth. And to cover lobbying carried on by the executive branch of the Government. These are improvements that could be made.

Using the existing law, and proceeding in this manner, and in this fashion, we believe, would be far preferable to attempting to do the wholesale revision job that the bills before you, S. 815 and S. 774, would undertake.

In our statement, we go into detailed discussion of the various provisions of the bills. Suffice it to say here in summary that as we see them, they go more into the direction of an effort to regulate lobbying than simply to obtain information about lobbying.

They would bog down the process to such an extent that we believe they would result in a very serious encumbrance on the lobbying process. We regard that process as a useful process, as part of the

legislative process. It is a process by which interested groups and noninterested groups, public citizens, or public interest groups, make known to Congress the effects, the possibilities, and the consequences of what they plan to do in the way of legislation. This is a very necessary part of the process, and we think it should be kept intact.

The various provisions of the bill, and it runs through all of the provisions of the bill, would encumber lobbyists in such detail, such detail in recordkeeping, such detail in reporting, as virtually to impose a serious restraint on the lobbying process, itself.

As I say in our statement, we have gone into this in considerable detail. It is not necessary for me to go into that here.

We also have some fears about some specific aspects of the bill. There is a provision in the bill, for example, that seems to us to possibly impose a requirement on organizations, like the AFL–CIO News, to become registered and to report as a lobbying organization.

This, I think might constitute a very serious infringement on our rights of free press. It needs very careful study by the committee.

The important provisions here—the main point which I would like to make with regard to them is that they impose very heavy penalties for recordkeeping regulations—recordkeeping and reporting regulations. Those that I am familiar with, such as the Fair Labor Standards Act, do impose penalties on failure to keep records. But the penalties in this bill are far more severe and far more serious than any that I am familiar with in any law dealing with substantive regulations of people's activities.

We believe, finally, that lobbyists deserve better than the onerous obligations which these two bills, or other bills of this kind, would impose upon them.

It is our hope that the committee will think better of this enterprise and will proceed to strengthen the existing law by closing loopholes, providing for consistent and realistic enforcement and extending it to so-called grassroots lobbying.

Such action would, in our opinion, achieve what the sponsors obviously want: To give the public the knowledge and information it should have, to preserve the constitutional right of the people to petition the Congress, and to end those abuses which have occurred because the present statute is weak and unenforced.

Both as lobbyists and citizens those, who believe, are worthy objectives and simple to achieve without engaging in the destructive methods of these bills.

Thank you.

Senator METCALF. Mr. Young?

Mr. YOUNG. Mr. Chairman, I would like to address myself, if I could, to section 6 of S. 815.

I have sent up to the table a copy of a memorandum that I prepared for Andy Biemiller.

On this last Monday, I attempted to keep a record of all of the communications I had under section 6, and as I understand that provision.

I sent that memo up to show the type of reporting that I think section 6 would require. It seems to me it raises all sorts of questions. As to many of the items I have listed, I am not sure whether they would be called lobbying or not.

For example, on Monday, at the close of the day around 6 o'clock, I was standing at Constitution Avenue, right in front of this building, trying to get a cab in the rain. A Member of the Senate very kindly stopped the car and offered to drive me up to my building because he was going by there.

At that point, he asked me if I had heard about the capture of the American ship. This led to a discussion of foreign policy.

I do not know if that is considered lobbying or not. I listed it on the memo. I would have to think that this Senator who picked me up and drove me through the rain when I did not have a raincoat was lobbying. I do not think he would consider it as such.

The list that I provide to the committee reflects all sorts of telephone calls on a whole host of issues.

I would like to make a couple of other points.

Monday is not normally an extremely active day. But on Monday, as you can see from the list, I was working on seven major issues, and then I had a number of other phone calls.

I do not know in some cases whether we would report when a Senator or a House Member lobbies us. I do not know whether a Senator or Member of the House is supposed to report, or a staff person is supposed to report.

It would seem to me that under the bill we would certainly have to report that we were being lobbied in a discussion.

Under the issue of lobbying with other unions, we have a regular Monday when we meet with the lobbyists of affiliated unions.

On last Monday's meeting, we had about 24 people there. We discussed the Consumer Advocacy Bill, both in regard to Senator Weicker's amendment, which was coming up that afternoon, and in terms of cloture which, of course, came up yesterday. We went over names of Senators that we still wanted to see.

We then talked at great length about an oil price amendment that was in one of the House Commerce subcommittees where we expected a vote yesterday.

We passed out at that meeting a 3 page fact sheet on this amendment. As I read the act, that fact sheet, of course, would have to be submitted.

As I went over this list, I started thinking of the implied scope of section 6, including bills numbers, positions, and so forth, it seems to me there would just be a tremendous amount of paper work involved. I really cannot believe that anyone would go through all of this material. I am not talking about the hardships it would cause various groups in terms of additional secretarial help, in typing up the material and submitting the material.

I think the AFL-CIO could probably do that job. A lot of other organizations—and legitimate organizations that we think should be lobbying and certainly have a right to lobby—probably could not accomplish that. It would not have the manpower. It would not have the staff. It would not have the facilities. So that the effect would be that, if left unchanged, section 6 would, I think, drive a number of public interest groups out of lobbying. I do not think that Congress wants to do this.

But, as I said, I would like to have this memorandum included as part of the record.

Senator METCALF. Without objection, so ordered.

[The document referred to follows:]

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
815 Sixteenth Street, N.W., Washington 6, D. C.

MEMORANDUM

Date: May 13, 1975

To: Andy Biemiller

From: Ken Young

Subject: Communications on May 12, 1975, Proposed Lobby Legislation Report Requirements

Following your suggestion, I kept a record of all legislative communications on Monday, May 12. The majority of these communications were by phone and were not initiated by me. I have broken the communications into three categories: Capitol Hill, Outside Groups, and Unions.

Capitol Hill

1. Legislative Assistant to Senator on proposed amendment to FLSA: (1) phone call and (2) meeting on issue
2. Senator on Weicker amendment to ACA and cloture vote
3. Senate aide on cloture vote and timing (ACA)
4. Congressman on AFL-CIO position budget conference report
5. House aide on farm bill veto
6. Senate subcommittee staff on pending manpower legislation
7. House Education and Labor staff on public service employment legislation
8. Senate budget staff on AFL-CIO position on conference
9. House aide on Energy Jobs Appropriations conference report
10. DSG for position on budget resolution
11. House leadership staff on budget resolution
12. Senator on strip mining bill possible veto
13. Senate committee staff on energy bill reported by Commerce Committee
14. Senate aide on problems of Accelerated Public Works and counter-cyclical revenue sharing

15. House Democratic Policy Committee staff on legislation to consider before recess (2 calls)

16. Senator - Foreign policy discussion when given ride to AFL-CIO during storm

17. Calls to three congressional offices on Farm Bill veto

Outside Groups

1. NFO - farm bill veto

2. legal service lawyers - AFL-CIO position on nominees to Legal Service Corp.

3. Consumer Federation of America - ACA cloture vote: 2 calls and 1 meeting

4. Consumer Federation of America - farm bill veto

5. Business Organization - call to determine AFL-CIO position on lobbying bill

6. Congress Watch - oil price amendment in House Subcommittee (3 calls)

7. Congress Watch - ACA

8. Common Cause - House legislation schedule for next week

UNIONS

1. AFGE - budget conference report

2. Steel - oil price amendment in House Subcommittee

3. AFT - legislation on education for handicapped

4. Monday meeting - ACA (1) Weicker amendment (2) cloture
oil price amendment in House Subcommittee

Senator METCALF. Who is the Senator you talked to about the strip mining bill?

Mr. YOUNG. The chairman who is holding this hearing right now.

I think this is a case in point, though. As you know, it was a very brief conversation. I listed it here simply because I supposed strict compliance with section 6 might require that.

Senator METCALF. When I came out after a vote, I said to you, "Did you hear anything about whether or not the President is going to sign the strip mining bill?"

Mr. YOUNG. That is right, Senator. It certainly was not much longer than that. We just talked very briefly about it.

Of course, I had not asked to see you. You came off the floor and we bumped into each other.

I really do not know whether strict compliances with section 6 would require some sort of report of that nature.

Let me cite another example.

Yesterday the AFL–CIO was attempting to override the President's veto of the farm bill. As is normal, prior to the vote and during the vote in the House, we had a number of union lobbyists standing off the floor, and as Members came to the floor we were trying to get their attention, and talk with them, and to urge them to vote to override. I suppose that I talked to somewhere between 15 and 20 House Members during that period. I was certainly making our position clear and obviously lobbying. I suppose I would have to list each one of those. Out of that number, I would guess six talked about other issues with me, such as: Are you people interested in so and so. What are you doing on something else? Have you been following our committee? I suppose those issues would have to be reported.

While I was standing there, a member of the White House staff was standing directly across from me doing exactly what I was doing, grabbing every House Member that he could and urging him to support the President's position.

Senator METCALF. They have a bigger staff than you do.

Mr. YOUNG. That is true.

This, I suppose, goes under their definition of congressional liaison.

On the other hand, I do not know where he was doing a darn think differently than I was doing, except that he got more votes. But the action was exactly the same. If a Republican would come by, he would say, "I sure hope you will support the President." He talked to the Member. I am sure the same situation occurred with Members that had something else on their minds to talk with him about, before going in to vote.

As I understand the act, he would not report. That seems a little strange to me.

But I do not know how either one of us would report, Senator, on that activity unless we had an automatic taping machine, or something, in our pockets. Or if we took a secretary with us to note every Member we talked to and what issues were raised.

Senator METCALF. A former chairman of this committee—and the immediate past chairman—used to carry this little blue booklet around in his pocket all the time. It is the Constitution. I have sent for one of the blue ones that he always carried. He was Senator Ervin.

I am going to read to you the first amendment. "Congress"—that is us—"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."

The other day I introduced a bill in Congress for the creation of some wilderness area in the State of Montana. There are a lot of snowmobiles up there. Snowmobiling is quite an activity there. It has not stopped snowing up there yet. They are still running around on snowmobiles.

Anyway, four snowmobilers came back and they said, "Look, we will not do any harm to the forest. We want to cruise around in one area. Our snowmobiles are out there in the winter and you are going to stop us."

Those people called on our Montana delegation: Senator Mansfield, Congressman Melcher, Congressman Baucus, and myself. They also talked with Mike Harvey. They talked with Vic Reinemer. They talked to other staff members, talked to more than eight people. Do those people who came back for one single purpose, with one idea, do they have to register as lobbyists?

Mr. MEIKLEJOHN. I think this bill reads that they would have to do so.

Senator METCALF. They talked to eight people.

Mr. MEIKLEJOHN. That is correct.

Senator METCALF. They spent more than $250 which is the expenditure figure in S. 815. Maybe they could get a fare reduction from the CAB or somebody, but they have not yet, so they had to spend more than $250 to get back here, each of them.

Mr. MEIKLEJOHN. We refer to a similar situation in our testimony, Senator, in which we point out that it certainly would be possible for a union officer to be standing outside the House floor, and a Congressman from his area comes by, and they might conceivably talk about the bill that is on the floor. That could very well ad up to more than eight persons—eight Members of Congress—and that would require him to register and report.

Mr. YOUNG. Senator, the same sort of case, a delegation from Montana or any State—a delegation of union members are in town, and they visit their Senators and their Congressmen.

Senator METCALF. Well, take Illinois. It is a State with a considerable number of Representatives. We have a Congressman and a Senator from Illinois who are authors of one of the bills before us. Say, these people call their entire delegation.

Mr. YOUNG. As we read the bill, those people would have to register.

Senator METCALF. Congress is prohibited from passing a law interfering with the right of the people to petition for redress of their grievances.

Mr. MEIKLEJOHN. As I was going to say, Senator, we do regard this as simply an exercise of the right to petition which is protected by the Constitution against Congress passing any law to restrict it.

Mr. YOUNG. One of the problems we have, I think, and I think this is what you are saying, is that the end result of that would probably be to cut back on lobbying by individual people who would be told, well, you really cannot do that, because if you nab people, and

so on, then you have to register. So that the average citizen is going to be reluctant to talk to either their Senator, or their Congressmen, or their staff.

Our feeling is that we should encourage the average citizen to lobby. We think the effect of this is just the other way.

Mr. MEIKLEJOHN. We do not quite look at lobbying, Senator, as the evil that some obviously think it is. It is a form of communication between the people and the Government. So this form of communication, it seems to us, is to be encouraged rather than restricted.

Senator METCALF. I want to say to you, that as one legislator for almost three decades now, that I use the services of lobbyists in my activities more than lobbyists come and see me.

One of my favorite lobbyists is the Montana Power Co. I do not think anybody would say I am subservient to the Montana Power Co., but when I want some information, I go the Montana Power Co.'s lobbyist, who is here in Washington, and ask him if he could find it out for me. With all justice, they have never given me false information.

Another favorite lobbyist of mine is the Anaconda Copper Mining Co. Every time I go to the Anaconda Copper Mining people for information they give me the information I desire. Sometimes I stand up on the Senate floor and say, "This is what the facts are from the Anaconda Copper Mining Company."

It is a two-way street really. Those people, of course, are registered lobbyists.

A few years ago, I was on the Ways and Means Committee in the House of Representatives. We were discussing some important economic questions. Wilbur Mills, in my opinion, was so much more knowledgeable than the rest of us. He was way ahead of us.

I called Bob Nathan, who is an independent economic consultant for Congress. I said, "Bob, would you help me a little bit on this?" He said, "Sure, I will help you while the committee is having consultation." We stepped away from the Ways and Means Committee room. In that room were representatives from the White House staff, and representatives of the IRS, and everybody. But I could not bring my own consultant into the room. So Bob Nathan stayed out in the hall.

I would ask Wilbur a question, and then he would give me a good ad lib answer that I could not respond to.

So then I would go out and say, "Bob, what is the story on this?" He would say this and so. Of course, by the time I got back in, Wilbur would give another good answer to someone else's question. And we would be on something else.

Bob stayed there for 3 or 4 days while we were marking up that legislation. I think he is a man running more than $250 a day. At my request, he came up there and volunteered his services. Yet, does he have to register as a lobbyist?

Mr. MEIKLEJOHN. Yes, I think he would. I think he would under the terms of the bill, Senator.

Mr. YOUNG. As you know, Senator, since you were the chairmanship of the DSG, there has been some gain in that area. The room is large enough. They are using the big room. Now you can get other people in there. But that does not answer your question.

Senator METCALF. Even when I was on the Ways and Means Committee and needed a consultant, he would have to register under this bill. The room was not large enough to take care of all the staff members of the White House, from the Treasury Department and so forth. I do not know if there is any room for private citizens or freshmen Congressmen to get in or not.

This whole subject, though, troubles me very much. I have been waited upon, as every Senator and every Congressman has, by all sorts of lobbyists. Some of them are skillful. Some of them are not very skillful. Some come at us with a baseball bat and other come in who are very persuasive. But I have always felt that they have a right, under the Constitution, to come in. I do not see why we should put obstacles in their way.

Let me ask you another question: In these days of high postage, and so forth, suppose someone is real excited about a bill. He sits down and writes a letter to every Member of Congress and to every Senator—535 of them—on one bill—on one piece of legislation. Does that person have to register as a lobbyist?

Mr. MEIKLEJOHN. I would think not, sir. There is no conversation involved in that.

Senator METCALF. No what?

Mr. MEIKLEJOHN. There is no conversation involved. Of course, had he done that orally—if he had come up here and talked orally to eight or nine—eight or more Senators then he would, but otherwise he would not.

Senator METCALF. Suppose he sends telegrams to all of the 535 Members?

Mr. MEIKLEJOHN. Then I believe he would be required to register.

Mr. YOUNG. Senator, a quick case in point.

There is a person in the State of Connecticut who has made a long time project of promoting the Youth Camp Safety Bill. He has worked on this for a number of years. I think he has almost singlehandedly been the main lobbyist for that bill, because of a tragedy in his own family.

Obviously, under this, he would be required to register.

As I understand his operation, I do not know how he could meet the requirements of this Act in terms of reporting. I think it would just be wrong to do something that would discourage that type of lobbying.

Senator METCALF. I think probably the AFL–CIO could meet those requirements, and the next witness from the Chamber of Commerce could. I think my old friends from the Montana Power Co. could meet them.

There are a whole lot of people who are concerned about legislation who are pretty naive about it. They really might have feelings about just one simple bill, and might be deprived of their constitutional right to petition the Congress.

Mr. YOUNG. I think that is a big part of the argument we are making, Senator.

Senator METCALF. You have suggested some changes in the law. For instance, you say that the term, "principal purpose" is a loophole at present. You suggest that we change it to a substantial pur-

pose or something of that sort. It seems to me the whole thing is ambiguous.

Mr. MEIKLEJOHN. Senator, I think our argument there was that you would not improve the situation very much to change "principal purpose" to "substantial purpose." This would not improve the situation very much.

Mr. YOUNG. What concerns us, Senator, is that we look at the quarterly reports in the Congressional Record—as Mr. Meiklejohn has said, under our AFL–CIO procedure, everything that is classified with the department of legislation, is included in the total figure.

So the question of whether it is principle or substantial does not concern us. We would list it all. We have no problem with that.

What does concern us is that the newspaper articles come out, and the AFL–CIO is the biggest lobbyist around, because we spend more money than anybody else, or some of our affiliates spend an awful lot. I guess that does not bother us too much either. But you look at some of the reports, and I know from having run into other lobbyists that they spend as much time as I do. Yet there will either be no figure for them or a very small figure. This, of course, comes from the idea of how much time they actually spend on lobbying.

Then, of course, there are some organizations that do not consider themselves to be lobbying at all. These are not the sort of things we are saying that we would like to see you address. That, plus the enforcement.

Mr. MEIKLEJOHN. These, of course, could be adopted through amendments and improvements in the existing law. They do not require a whole new statute of this nature.

Senator METCALF. Yesterday, I went to a luncheon given by the Northwest Utilities. I was lectured all day about the evils of the strip mining bill, and about the need for congressional subsidies for the companies that are going broke, because they have not been able to increase their revenue. It doubled in the last year. They talked about how my activities on the fuel adjustment clause are hurting utilities all over America, and so forth. Most of the Northwest congressional delegation was there. One person leaned over and said to me, "Lee, there is no such thing as a free lunch."

One of those utility executives, Mr. Don Frisbee, put an ad in all of the papers in the Pacific Northwest, telling them what the strip mining bill would do to the consumer. He does not now have to register. Yet, he may have more impact on that legislation than the people that are up here on the Hill.

Without objection, Mr. Frisbee's ad will be included at this point in the record.

[The material follows:]

On May 7, 1975, this letter was sent to President Gerald R. Ford. It's about your electric bill.

PACIFIC POWER & LIGHT COMPANY
PUBLIC SERVICE BUILDING
PORTLAND, OREGON 97204

DON C. FRISBEE
CHAIRMAN OF THE BOARD

May 7, 1975

The President
The White House
Washington, D. C. 20025

Mr. President:

Our electric customers are getting it from all sides...inflation, economic uncertainty, just plain hardship in making ends meet in 1975.

Now, along comes the National Surface Mining and Reclamation Act of 1975. This bill is simply bad news for the pocketbooks and energy needs of our customers. And I for one have grown tired of watching our ratepayers pay more, as yet another layer of government regulation is imposed...yet another cost is loaded onto the customer.

This legislation is now on your desk. I think many parts of this bill are needed. But the objections you raised to a similar bill you vetoed last December still exist. I urge you to veto this version also. Why?

1. This bill extracts too large a contribution from our customers to correct long-neglected strip mining abuses in the East. Restoring America is a burden that should be shared by everyone. However, in addition to paying for the reclamation we do at our mines, our customers also will be paying millions of dollars annually to restore lands that neither their utility nor they were responsible for damaging.

2. This bill can make new Federal coal leases all but unobtainable... a remarkably shortsighted action as the nation struggles to find solutions to meeting energy needs.

3. Neither the interest of electric consumers nor the national interest will be served by virtually locking up vast areas of Western low-sulphur coal...coal which represents a significant national resource...coal which is environmentally desirable.

Mr. President, when all is said and done, the person who gets hurt the most by this legislation is the average bill-paying customer. He's going to pick up the tab...and he's the person to whom we answer. I think most of our customers would agree that you should again send this bill back to Congress for reconsideration.

We pledge our best efforts to back you in your effort to obtain constructive environmental protection for coal mining without the restrictive and costly features included in this bill.

Respectfully yours,

Don Frisbee

PS:

I have requested this letter be published in newspapers our customers read. And I am encouraging them to lend their voices in support of a decision to veto this bill.

To our customers:

If you want to help do something about higher electric costs... each of Pacific Power's local offices has more information on this bill. If you agree with Don Frisbee that this bill should be vetoed, clip this letter and forward it with your name and address to President Gerald R. Ford, The White House, Washington D.C. 20500. You have a great deal at stake in the provisions of this pending legislation.

DON FRISBEE

May 7, 1975

Senator

We'll be publishing this ad in newspapers throughout our service area after the bill reaches the President's desk.

Don Frisbee

The People at Pacific Power

Senator METCALF. Believe it or not, I am opposed to what Mr. Frisbee said about the Strip Mining Bill, but I think he has a right to go around and tell the people about his views on it. Nobody can stop him from putting that ad in the papers. He should be allowed to do that. It seems to me that we are violating a basic principle of the Constitution if we prevented him from doing that.

Mr. MEIKLEJOHN. Senator, there isn't anything in the bill that would prevent him from doing that. But certainly if he were required to report in detail on everything he had done in connection with it it would impose hindrances in the way of his exercising that right. I think that is one of the main problems that we have with it. There is an aura in this legislation of regarding lobbying as an improper activity rather than as simply requiring reporting. That is one of the things that we are most concerned about, to have lobbying treated as if there was something wrong with lobbying. We do not think there is anything wrong with lobbying. As a matter of fact, we think it is a very essential part of the whole legislative process. It is a process through which the public and the Congress communicate with each other. Anything that would dry that up would be very unfortunate.

Senator METCALF. As one Senator who has been lobbied by almost everyone, I have enjoyed this dialog.

Committee staff has prepared some questions. I am going to ask Mr. Turner to ask them.

Mr. TURNER. Mr. Young, or Mr. Meiklejohn, the General Accounting Office report issued to this committee noted lack of enforcement of the present act by the Justice Department. It also noted the failure of the Secretary of the Senate and the Clerk of the House to refer specific matters to the Justice Department. This would indicate a rather serious problem of enforcement under the present law.

Yet you call the transfer of responsibility for administration and enforcement to the Federal Elections Commission a very disquieting aspect. Could you explain what you mean by that? Then after you have explained it, I will ask you the second question.

Mr. MEIKLEJOHN. We did not particularly, as I recall, indicate anything particularly disquieting about the Federal Elections Commission. If there is any problem that we would have with regard to it, it would be that the Elections Commission is just getting started. It has enough to do, we believe, with the functions that have already been vested in that Commission.

To impose additional responsibilities, particularly of the detailed nature that this bill provides, on that Commission, would very seriously handicap that Commission's performance of what we regard as a very important function with regard to campaign expenditures.

Mr. TURNER. Let me——

Mr. MEIKLEJOHN. We do not object in principle at all to the Election Commission having those functions.

Mr. TURNER. You do not oppose having somebody with new and stronger enforcement powers come in either under the present law or any amended law?

Mr. MEIKLEJOHN. I think we have indicated in our statement that we believe that the law should be made effective, and this may

very well require transferring those responsibilities to another agency.

Mr. TURNER. A suggestion has been made to the Members that the General Accounting have special enforcement power with respect to the lobbying law. You can answer this later, if you want to think about it, or give us some suggestions now as to what kind of a body you would feel that would be effective.

Mr. MEIKLEJOHN. Of course, the General Accounting Office is, in a sense, an agency of the Congress. It is not primarily an enforcement body. We think that it would be preferable to have the law enforced by one of the executive agencies which would have some experience in the enforcement of law. I think it might have serious consequence, as far as the work of the General Accounting Office, to transfer enforcement functions of this character to such an office.

Mr. YOUNG. What we do want to emphasize, and I think the testimony so states, that we are for enforcement and for stronger enforcement.

Senator, I have been a lobbyist for the AFL–CIO for, I think, 10 years now. As far as I am concerned, I get the regular little notes from both the Senate and the House side that, in effect, say I have complied with the requirements because I have filed a quarterly report. That is all. That is all I have ever seen. I put those in a little file. I have a file that is going back 10 years that includes those.

I think what we are saying is that there should be real enforcement. As far as we are aware, there is no enforcement at the present time.

I think, as Mr. Meiklejohn said, our only argument with the Election Commission is that, to the best of our knowledge, they have a tremendous load of work to do right now. So they probably could not handle it at the present time.

Mr. TURNER. But mainly, Mr. Young, how can you have enforcement of the law, enforcing it in terms of penalties, if the law is unclear?

Mr. YOUNG. We would like to see the law made clear. We have no argument to that.

Mr. MEIKLEJOHN. Are you talking about the coverage of the law?

Mr. TURNER. Yes, in such terms as "principle purpose," or "substantial purpose," or some kind of purpose. How can you enforce any kind of a civil or criminal law which is not clear?

Mr. MEIKLEJOHN. Well, I think that is what we are saying, because with the present language, the law is not clear. That is part of the problem. We would like to see the law strengthened to those terms so it could be enforced. That is where we would like to see the main direction of the legislation go.

Mr. TURNER. If you have some suggestive language that would make the law clear, we would very much appreciate it. We are struggling for that.

Mr. YOUNG. Right.

Mr. TURNER. What percentage of time does the AFL-CIO spend in lobbying the executive——

Mr. MEIKLEJOHN. Let me make one comment in connection with what you were just asking.

It seems to us that the simple fact that a person engages in lobbying may be, by itself, a sufficient definition. To require an organization that is engaged in lobbying to register—this is the important thing. But to deal with a person simply exercising his right of petition, this is something else.

Mr. TURNER. How much time do you spend in lobbying the executive branch?

Mr. YOUNG. The AFL–CIO?

Mr. TURNER. Yes.

Mr. YOUNG. I suppose that depends on the individual lobbyist. The two of us are probably good examples. I spend next to none. Mr. Meiklejohn spends a great deal of time. We divide down areas of jurisdiction by substance. I think the only branches of the Federal Government that I do any lobbying with are probably the Labor Department and, to some extent, HEW. Mr. Meiklejohn does a great deal more.

Mr. TURNER. Well, would you support an executive lobbying provision, or do you find that is something that gives you trouble?

Mr. MEIKLEJOHN. I think we have indicated in the statement that it would not give us any trouble. We would support that.

Mr. TURNER. One further question. Should advertising, which is designed to influence an opinion about pending legislation, be covered under the new lobby legislation?

This may have been partially covered by the chairman. But that is the final question from Senator Ribicoff's staff.

Mr. MEIKLEJOHN. Could you repeat that?

Mr. TURNER. Yes. Should advertising, which is designed to influence an opinion, either a letter or a statement by an organization or an individual, which is a paid advertisement saying do not vote for this bill or something like this—do you think that should be covered under the new lobby legislation?

Mr. MEIKLEJOHN. Your question is going to who was responsible for that act? Is that what you are saying now?

Mr. TURNER. Should he register as a lobbyist?

Mr. MEIKLEJOHN. The problem is not with the publication. The problem is who does the publishing and who is responsible for the payment.

Under the existing law there is some responsibility for reporting on the payment. But the actual publishing does not seem to me to be the question that you want to get at.

Mr. TURNER. The reporting of the payment is what you said?

Mr. MEIKLEJOHN. That is correct.

Mr. TURNER. Thank you very much.

Senator METCALF. We thank you very much. We will take judicial notice, since we have heard from two experts here today. Thank you for coming up and talking with us about your views on this legislation.

Mr. YOUNG. Thank you, Senator.

Mr. MEIKELJOHN. Thank you.

Senator METCALF. Is Congressman Railsback here yet?

Mr. TURNER. Not as yet, Mr. Chairman.

Senator METCALF. We will go with our next witness.

Our next witness is Mr. Milton A. Smith, general counsel for the Chamber of Commerce of the United States.

Mr. Smith, we are delighted to have you with us. We are pleased to have a representative from the Chamber of Commerce.

TESTIMONY OF MILTON A. SMITH, GENERAL COUNSEL, CHAMBER OF COMMERCE OF THE UNITED STATES, ACCOMPANIED BY STANLEY T. KALECZYC, JR., ASSISTANT GENERAL COUNSEL

Mr. SMITH. Thank you, sir.

My name is Milton A. Smith. I am general counsel of the Chamber of Commerce of the United States. With me is Stanley T. Kaleczyc, Jr., assistant general counsel.

We appreciate this opportunity to discuss S. 815, the Open Government Act of 1975 and S. 774, the Public Disclosure of Lobbying Act of 1975 on behalf of the members of the National Chamber Federation.

The formal statement which I have submitted is directed specifically at the provisions of these bills. It does not undertake an examination of the existing Regulation of Lobbying Act, and its defects, and basic considerations which should guide revision or replacement of that law.

Thus, I would like to emphasize that the national Chamber has long acknowledged that there are defects in the present law, assuming that you are going to have a lobbying statute on the books. The present law needs substantial revision if it is to be a useful and workable statute to supplement other laws directed specifically toward corrupt practices without at the same time subjecting individuals and organizations who openly and lawfully exercise rights of free speech, assembly and petition to constant uncertainty and hazard of criminal prosecution.

Our comments in this regard were detailed in the statement which I presented on October 1, 1970, to the House Committee on Standards of Official Conduct.

In the hope that this review of problems under the existing law, and suggestions of basic considerations relevant to its revisions, will be helpful in this committee's deliberations, I would like to submit a copy of that 1970 statement with the request that it be made part of the record of these hearings.

Senator METCALF. Without objection, it will be included at this point in the record.

[Statement referred to follows:]

STATEMENT
on
REVISION OF THE REGULATION OF LOBBYING ACT
before the
HOUSE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
MILTON A. SMITH
October 1, 1970

My name is Milton A. Smith. I am General Counsel of the Chamber of Commerce of the United States.

I am glad to have this opportunity to discuss the subject of regulation of lobbying which this Committee is considering under the authorization contained in H. Res. 1031.

Throughout almost a quarter of a century since the Regulation of Lobbying Act of 1946 was enacted there has been continuous criticism of the Act.

Numerous proposals have been advanced for its revision.

The failure of all of these proposals seems clearly to be due to a faulty approach.

Typically, the approach has been to try to graft on an already incomprehensible and unworkable criminal statute even more impracticable, unnecessary, and burdensome requirements.

All too often, constitutional limitations which should be respected have been disregarded in a preoccupation with efforts to achieve what are usually characterized as broader and tighter reporting requirements.

Need for Reexamination of Present Law.

I would hope that this Committee, in considering revision of the present law or its replacement with a new statute will reexamine with great care the defects of the present law and the premises on which it is based.

The starting point, unquestionably, is recognition that the present Act needs substantial revision, if it is to be a useful, workable statute to supplement other laws specifically directed toward corrupt practices, without subjecting individuals and organizations who openly and lawfully exercise rights of free speech, assembly and petition to constant uncertainty and hazard of criminal prosecution.

In such revision the aim should be:

(1) To direct the Act toward practices that are inherently corrupt or otherwise so tainted with impropriety as to warrant criminal law restraints--insofar as such practices are not already covered by, or more appropriately dealt with under, other provisions of law.

(2) To avoid interference with the lawful exercise of rights of free speech, assembly, or the press.

It is of paramount importance that the law not operate as a source of unwarranted harassment to those, who, in the course of their lawful employment or professional pursuits may have occasion to speak on behalf of their employers or clients on legislative issues. Further, it should not impede the legitimate functions of voluntary associations through which persons may seek openly to make known their views on issues of concern to them.

To accomplish these aims requires a general simplification and clarification of provisions in the existing law. Instead of being vague and ambiguous, the law should clearly define and be limited to the corrupt and improper practices which are sought to be barred. Specific exemptions or exclusions should be carefully spelled out. There should be eliminated record keeping or reporting requirements that are needlessly detailed, burdensome, and overlapping or with which literal compliance may be impossible as a practical matter.

Examples of Problems Under Present Law.

I will not undertake to cite at length all of the detailed provisions of the present law which need to be dealt with. However, some examples may be shown, with particular reference to the kinds of questions that confront any general-purpose organization and its officers and employees.

(1) There is uncertainty as to just what kind of acts, expenditures, or publications fall within the scope of the Act, and the point at which an individual employee or his employer, when either or both of them have a variety of functions, becomes liable to a requirement to register and file reports. How is the degree of relative importance of various acts to be measured--in terms of time devoted to them, or the expenditure of funds involved?

(2) The scope of the exemptions for appearances before a Congressional Committee is not clear. The Supreme Court has indicated that "direct lobbying" includes a representation to a committee. Section 308(a) of the Lobbying Act makes certain of its registration and reporting requirements inapplicable to one who only appears before a committee, but does nothing else in furtherance of a purpose to influence legislation. It is not clear whether this exemption extends to other sections of the Act, such as Section 305 requiring certain reports of receipts and expenditures. Nor is it clear whether this exemption is lost by any of many other things that a witness might do, such as the publication of his testimony, or his response to subsequent requests from the committee staff or members or non-members of the Committee for further information.

(3) If an individual or his employer is covered, there is the question of how to properly account for receipts and expenditures. The choice seems to be between stating under oath that all receipts and expenditures are for lobbying--or to try to make a reasonable allocation. Many insoluble problems confront one who tries to determine a proper basis for making allocations, in terms of deciding what is to be included, and how an apportionment is to be made.

(4) There are specific requirements with which literal compliance can be impossible. One of these is the provision in Section 308 that says that anyone subject to the Act must include in his reports the names of any newspapers, periodicals, or other publications in which he has "caused to be published any article or editorial."

These problems are examples of the features of this law which led Mr. Justice Jackson, in the Harriss Case, to criticize it as permitting "applications which would abridge the right of petition," and as "so mischievously vague that the government charged with its enforcement does not understand it." Similarly, Mr. Justice Douglas and Mr. Justice Black characterized the Act as one that "can easily ensnare people who have done no more than exercise their constitutional rights of speech, assembly and press," and added:

> "The language of the Act is so broad that one who writes a letter or makes a speech or publishes an article or distributes literature. . . has no fair notice when he is close to the prohibited line. . ."

Basic considerations in Revision of the Law.

Adherence to the sound view of the Supreme Court that a lobbying registration and reporting statute must, to keep within First Amendment bounds, not extend beyond so-called "direct lobbying", will help in drafting a new law that avoids the defects and pitfalls of the present one.

In this regard I heartily endorse this comment in the conclusion of the minority report of the House Select Committee on Lobbying Activities, 81st Congress (Buchanan Committee):

> "We doubt whether the so-called indirect lobbying, which on the surface at least, is no more or less than constitutionally protected freedom of speech, can, or should be, regulated by the Congress. We do feel that those individuals whose principal purpose is to attempt to persuade individual Members of Congress to follow a certain course of action might well be required to identify themselves and their source of support. Whether any lobbying statute should go further than this is seriously open to question."

Above all, it is to be hoped that in any recommendations which this Committee may make, it will weigh carefully all possible implications of government censorship or control of publication of facts or opinion on national issues.

Preserving the Role of Voluntary Associations.

As has been indicated, some of the most perplexing problems which have arisen under the existing law are those confronting voluntary associations having legislative interests and their employees.

This is regrettable and should be remedied.

For, Americans having a community of interest have traditionally looked to voluntary associations of all kinds as a way to join together in the consideration of national issues of concern to them and to express their views on these issues. This right of voluntary association is more than just a Bill of Rights principle; it has always been an important and distinctive feature of the American democratic system.

America's businessmen have a community of interest in those national policies and measures which promote healthy economic growth of the Nation. There is need for more, rather than less, active interest and participation by businessmen in maintaining good government. The stimulation of this interest can come only from continued enlightened leadership and education through the Nation's voluntary business associations.

Our special concern with measures that may impinge upon the legitimate functions of these organizations arises partly out of the fact that they are, and as a matter of law must remain, voluntary associations. No trade association or chamber of commerce can force anyone to join or pay dues or assessments to it as a condition of entering or staying in business; the Federal anti-trust and trade regulation laws effectively bar any closed shop in the membership of a business association. Since they can exist only by virtue of wholly voluntary support, these organizations can be peculiarly vulnerable to measures which may affect their legitimate functioning or discourage membership support and participation.

Such organizations should be permitted and encouraged to perform their legitimate functions without being unnecessarily subjected to hazards of prosecution or other harassment.

To impinge in any way upon the right of America's voluntary business organizations to speak for their members or to publish their side of the case on important national issues would be to give aid and comfort to forces that would extend government intervention and control of the economy and of individual action.

Conclusion

The following considerations should be paramount in any revision of Federal law to regulate lobbying activities: (1) That constitutional as well as practical considerations narrowly restrict the scope of any law designed to require reporting of activities or expenditures related to efforts to influence legislation; and (2) That complex, technical record-keeping and reporting requirements are needlessly burdensome and unfair when applied to persons whose advocacy of a viewpoint on legislation is open and free from corrupt or unethical conduct, especially where these requirements are imposed under a criminal statute.

Thus, any law dealing with the dissemination or communication of views on national issues should seek to eliminate or deter practices which are inherently corrupt or otherwise so tainted with impropriety as to warrant criminal law restraints. At the same time, it should avoid the imposition of sanctions or unnecessary burdens on the exercise of rights of freedom of speech, assembly and the press.

Mr. SMITH. The national Chamber supports revision of the law governing registration, and reporting by lobbyists, and lobbying organizations which meet these important criteria:

One, conformity to the constitutional limitations on the scope of coverage as enunciated by the Supreme Court in *United States* v. *Harriss*.

Two, simplification and clarification of provisions of the law so that rights and obligations are clearly specified and understandable.

Three, avoidance of requirements that can operate to restrain or have a chilling effect on the exercise of first amendment rights.

Four, avoidance of record keeping or reporting requirements that are so detailed, burdensome and cumbersome that the cost of compliance is excessive in relation to any public benefit.

For reasons set forth in my formal statement, S. 815 and S. 774 fail to meet any of these criteria. Our principal objections to these proposals, briefly stated, are: they are overly broad in their scope of coverage; they are vague and ambiguous in certain key definitions; they would have discriminatory applications; they set virtually no restrictions upon the nature or quantity of information which might be demanded of covered persons; they require the disclosure of membership lists of voluntary organizations, in violation of first amendment rights.

Senator METCALF. It is probably a violation of the fourth amendment.

Mr. SMITH. Yes, sir.

They mandate recordkeeping and reporting requirements which far exceed what might be reasonably required to achieve the legitimate purposes of a lobbying disclosure law. The utility of the voluminous reports and records that are required is subject to serious challenge in view of the time lag between the events reported and the decisions made on the one hand, and the disclosure of such events on the other hand.

The fundamental objective of these bills is to extend registration, recordkeeping, and reporting requirements to an extremely broad range of persons who engage in any activity which constitutes an attempt to influence the policymaking process of the executive and legislative branches, either directly or indirectly.

At the outset then, these bills would go far beyond the first amendment limits which the Supreme Court has held govern any requirement for accounting for lawful lobbying activity.

The Court has emphasized that a lobbying statute may not reach beyond the bounds of direct lobbying, that is, representations made directly to Members of Congress.

An important rationale for drawing this line is that any disclosure legislation that goes beyond the area of direct lobbying inevitably involves the kind of inquiry into acts or motivations that will impinge upon constitutionally protected rights.

In summary, the national chamber urges this committee to reject these bills, because they violate fundamental constitutional rights, and inhibit the free and unfettered exercise of these rights.

Further, they impose administrative burdens disproportionate to any possible marginal public interest purpose asserted by the proponents of the bills.

These bills do not affect solely those individuals, associations or other organizations which engage in wide-scale lobbying activities and spend large sums of money. Rather they impact directly upon all citizens whenever they exercise their constitutional right to petition their Government.

In the final analysis these proposals convert a constitutional right into a privilege which may be exercised only at significant personal expense, unjustified inconvenience, and under the constant danger of criminal or civil prosecution for overlooking some of the myriad of proposed recordkeeping and reporting requirements. Thank you.

Senator METCALF. Thank you very much, Mr. Smith.

I want to state to you, as I said, with respect to my own two favorite lobbyists, the Montana Power Co. and the Anaconda Copper Mining Co., that when I called upon the U.S. Chamber of Commerce for information, I got an honest and quick response.

I just do not know how any of us would function in this very complicated area we are in without the activities of the various lobbying organizations.

I think that your organization could comply with the provisions of this legislation. You have staff and facilities to make reports, but I do not see how an ordinary citizen who was really concerned about a bill could comply with all of the complex proper work that is suggested here. It seems to me that anybody who comes from any State with larger population than the State of Montana—we only have four Members of Congress—would be calling upon every Senator and Congressman, their staff, and so forth. He would have to register as a lobbyist under this legislation.

Mr. SMITH. Mr. Chairman, a couple of weeks ago I was quoted in one of the newspapers in a response to an inquiry about this bill—or these bills because they are basically similar in their application and effect—that if they were passed, and if all of the provisions could be constitutionally upheld, we probably would have to put up a new Pentagon just to hold all of the papers that would be filed until they can get around to microfilming them.

Senator METCALF. Maybe they could use the FBI building down there. The basement is steep enough to take care of them.

Mr. SMITH. Mr. Chairman, you were kind enough to make a complementary observation about the Nation's Business magazine. I would like to read from the current issue of Nation's Business, because I think it illustrates one of the many types of problems that arise under this law. This would be the requirement for accounting for any actions that an organization and which were directed toward influencing public policy. Of course, that requires that you examine every one of your publications, and then try to determine whether or not something in them is directed toward influencing public policy.

In the current issue of Nation's Business I have noted two articles out of the entire magazine. One of these deals with the problem of illegal aliens and examines that issue. It quotes General Chapman in this article. He adds: "What we need more than anything else is the Rodino bill to make it illegal to hire them knowingly." I would have to assume that this would be construed as an attempt to influence public policy and, therefore, we would have to report this. We would

have to put some monetary value on it. I am not sure just what other things we might have to do in connection with it. But we would have to report the fact that we carried this little reference to somebody quoting Chairman Rodino in favor of the bill.

There was another article in this magazine on page 35 about the accomplishments of the House Small Business Committee. There is a picture of Representative Joe Evins. It says: "Representative Joe Evins' upgraded House committee has a larger role in the future of small enterprises." There are a number of references to Chairman Evins, and to the efforts which are being carried on there for small businesses. These involve matters of public policy and I would assume they could be construed as attempts to influence public policy.

Senator METCALF. Thank you very much, Mr. Smith. Your prepared statement and the document entitled, "Proposed New Federal Lobbying Laws," dated April 1975 and printed by the Chamber of Commerce of the United States will be placed in the record at this point.

[The material referred to follows:]

Testimony
on
S.815, OPEN GOVERNMENT ACT OF 1975
before the
SENATE GOVERNMENT OPERATIONS COMMITTEE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by

MILTON A. SMITH

May 14, 1975

My name is Milton A. Smith. I am General Counsel of the Chamber of Commerce of the United States. Accompanying me today is Stanley T. Kaleczyc, Jr., Assistant General Counsel.

I appreciate this opportunity to discuss S.815, the Open Government Act of 1975 and S.774, the Public Disclosure of Lobbying Act of 1975 on behalf of the members of the National Chamber Federation.

My comments reflect considered appraisal of these bills and their implications, if their provisions could meet tests of constitutionality. I must, therefore, emphasize my strong conviction that in many respects they infringe upon well-settled and basic constitutional rights. And, I must say that I am utterly appalled at these bills, and the rationale on which they are based.

S.815 is certainly mislabeled as the "Open Government Act." The pronouncements in the first section of the statement of purposes about affording the "fullest opportunity to the people of the United States to petition their government for a redress of grievances and to express freely to Federal employees in Congress and the Executive Branch their opinion on pending legislative and executive actions and other policy matters," blatantly disregard the actual impact of the bill.

The incredible burden of recordkeeping and reporting which would be imposed upon those who seek to exercise their most cherished rights of free communication with their government and free expression of information or opinion on the conduct of their government would certainly have a chilling effect upon the exercise of these rights.

I cannot bring myself to believe that we have come to a point in a society of freedom and democracy where untold thousands of persons must keep black books in which they will be required -- under threat of heavy fines or jail sentences -- to record every communication they may have with anyone in the Federal Government, make a decision whether that communication is covered by the sweeping and ambiguous scope of such a law, undertake to compute a financial evaluation for each reportable item, and dutifully struggle to fill in a form prescribed by a bureaucratic body, under which they will account to that body for all of these exercises of their constitutional rights.

One derives scant consolation from noting that the Federal Election Commission, designated to administer and enforce the law, has, among its wide range of duties and powers, to "prepare a manual setting forth recommended uniform methods of accounting and reporting . . . " That the drafters of the bill included this provision seems to reflect a recognition of some of the problems which will be generated. Regrettably, however, this is only one of the manifestations of an unconscionable move toward new forms of regimentation, and unproductive added overhead costs to affected businesses. Clearly, this is the actual thrust of the legislation, despite the proponents' claims.

Another fallacy repeatedly cited is that a useful indication of the relative effectiveness of various interests in espousing their views on public policy is the amount of money spent by each of them. The

spuriousness of this concept is so obvious that it is difficult to comprehend why it has not been rejected. The history of legislation is replete with examples where the best financed legislative efforts failed, while politically potent "grass roots" organizations at small cost won the day.

Furthermore, I am compelled to express deep concern over the rationale employed by the supporters of these proposals; namely, that they are intended to close the "gaping holes" created by the Supreme Court in United States v. Harriss, 347 U.S. 612 (1954). Indeed, I find it most anomalous that the supporters of this legislation would even suggest that the same Supreme Court which decided the landmark case Brown v. Board of Education less than one month earlier would create "loopholes" in deciding another case in which important constitutional rights hung in the balance.

Indeed, Mr. Chief Justice Warren, in speaking for the majority of the Court, interpreted the Regulation of Lobbying Act of 1946 in such a way precisely "to avoid constitutional doubts" (347 U.S. at 623) which would flow from too broad an interpretation of the Act.

So that there may be no doubt, let me read for the record the summary of the majority in Harriss:

> To summarize, therefore, there are three prerequisites to coverage under §307: (1) the "person" must have solicited, collected, or received contributions; (2) one of the main purposes of such "person," or one of the main purposes of such contributions, must have been to influence the passage or defeat of legislation by Congress; (3) the intended method of accomplishing this purpose must have been through direct communication with members of Congress. And since §307 modifies the substantive provisions of the Act, our construction of §307 will of necessity also narrow the scope of §305 and §308, the substantive provisions underlying the information in this case. Thus §305 is limited to those persons who are covered by §307; and when so covered, they must report all contributions and expenditures having the purpose of attempting to influence legislation through direct communication with Congress. Similarly, §308 is limited to those persons (with the stated exceptions) who are covered by

§307 and who, in addition, engage themselves for pay or for any other valuable consideration for the purpose of attempting to influence legislation through direct communication with Congress. Construed in this way, the Lobbying Act meets the Constitutional requirements of definiteness.

Thus construed, §§305 and 308 also do not violate the freedoms guaranteed by the First Amendment -- freedom to speak, publish and petition the government. 347 U.S. at 623-625 (Emphasis added; footnotes omitted).

Any legislative proposal which would extend the powers and authority of some governmental entity beyond those prescribed by the Supreme Court is on the very thinnest constitutional ice. Indeed, to borrow the words of Justices Douglas and Black in Harriss, S.815 and S.774 "can easily ensnare people who have done no more than exercise their constitutional rights of speech, assembly and press." 347 U.S. at 628.

As the Members of this Committee know, the problems associated with attempts to amend or replace the Federal Regulation of Lobbying Act of 1946 are two-fold:

First, constitutional limitations effectively foreclose the attainment of a goal of complete and comprehensive disclosure of all the influences that may be brought to bear on legislative issues.

Second, any disclosure legislation that goes beyond the area of "direct lobbying" inevitably calls for new complex and burdensome recordkeeping and reporting requirements, the enforcement or implementation of which leads to the kind of inquiry into acts or motivations that is likely to impinge upon constitutionally protected rights.

The National Chamber urges this Committee to reject S.815 and S.774 as proposals which impinge upon basic constitutional rights, create an atmosphere in which individual citizens will be inhibited in their exercise of these same constitutional rights, and impose onerous recordkeeping and reporting requirements which are disproportionate to any public interest purpose asserted by the bills' proponents.

Indeed, the time lag which is inherent in such proposals between the date on which "lobbying" allegedly occurred and the date on which the report of such activity first appears in the public record will render the information of little, if any, value. While proponents urge that the sought-for data are necessary in order to permit officers and employees of the Executive and Legislative Branch to assess lobbying pressures and the sources of such pressures in particular, the fact is that more often than not, the information will be outdated by the time it is available. What possible justification can there be for providing "stale" information after the critical vote or critical decisions have been made? This problem becomes particularly acute when appropriately considered in the context of the extensive and burdensome requirements proposed in these bills.

Constitutional Issues

At the outset, as in the Harriss case, it is necessary to determine whether the proposed legislation meets the constitutional standards of due process. To this end, an examination of the definitions contained in the two bills is in order.

The Policymaking Process

The essence of these proposals is to enforce registration, record-keeping and reporting requirements against any "person" who attempts to "influence the policymaking process" of (i.e. "lobby") the Executive or Legislative Branches either "directly" or "indirectly."

S.815 would define the "policymaking process" to include virtually all "pending or proposed" matters before either branch of government. Although some semblance of understanding can be culled from "pending" by reference to bill numbers, docket numbers, or some other ascertainable referent, the term "proposed" is woefully lacking in any manner of precision. When is a piece of legislation, for example, first "proposed?" When a Member of Congress first speaks about the bill on the floor of the House or Senate? When the Member first discusses it with his staff? Or when he first gives personal consideration to some idea and mentions it in passing to a constituent? Need a Member's personal reflection on the matter be the relevant criterion? What if a staff person first mentions it to a constituent?

I would urge the Members of this Committee not to dismiss these questions lightly as some have suggested to this Committee, by referring them to the supervisory authority which may be created to administer the law, if enacted. Constitutional questions cannot be passed on to an administrative agency for resolution.

S.774 does not make the phrase "policymaking process" any more concrete. Indeed, what constitutes "action taken by a Federal officer or employee?" I will leave it to the speculation of this Committee as to when "action" is initiated, for purposes of this proposal.

Permit me just one further comment with respect to this definition contained in S.774. The definition itself is tautological since "policymaking process" refers to any "action taken . . . with respect to any . . . other policy matter." There can be no doubt in the minds of the Committee that such a definition is unenlightening. No individual citizen of average intelligence could possibly be given adequate notice as to when the requirements of these bills are triggered by such a definition.

I need not remind this Committee, however, that precisely such notice is the cornerstone of the constitutionally guaranteed right to due process of law. The Supreme Court summarized the evils attendant upon a law which is imprecise and vague as follows:

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut[s] upon sensitive areas of First Amendment freedoms," it "operates to inhibit the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to " ' steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked." Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972) (footnotes omitted).

Substantial Purpose Test

In order to broaden the categories of individuals who would be deemed to be "lobbyists" subject to the requirements of S.815, the "principal purpose" test contained in the 1946 Act would be replaced by a "substantial purpose" test. No indication is provided in S.815, however, concerning the definition of "substantial."

In their testimony before this Committee, Senators Stafford and Kennedy provided the following indication of how broad they intend the coverage:

> An organization hires Mr. A as its Washington representative for a $10,000 a year retainer. Approximately one-tenth of Mr. A's job for the organization involves lobbying; the remainder involves private activities of the organization, unrelated to lobbying. Mr. A must register as a lobbyist, because he meets the "income" test (he is paid more than $250 a quarter for his employment and a "substantial" part of his job involves lobbying). Presumably Mr. A would also meet the "communication" test by making eight or more lobbying communications per quarter.

In concrete terms, because the hypothetical Mr. A spends 4 hours out of a 40 hour work week engaged in "lobbying activities" he must register as a lobbyist and assume all of the attendant obligations and risks. Even if Mr. A did not communicate orally on 8 or more separate occasions with Federal officers or employees, the result would be the same. Indeed, if Mr. A spent an average of 4 hours per week preparing communications to the members of his organization which arguably might be construed to be "solicitations" to "lobby" -- e.g. grass roots publications -- he would be a "lobbyist" for purposes of this legislation.

Does this Committee honestly believe that such activity must be reported? Further, if Mr. A spent 3 hours a week preparing such communications, would this be less than "substantial" activity?

We are all aware that "substantial" means whatever the individual who reads this proposal desires the term to mean. "Substantial," as Senator Brock has previously pointed out, can mean more than 50% of an individual's time to less than 10%. If there ever was a standard upon which reasonable men might differ, this is it. There can be no doubt that within the context of this bill, the term "substantial" vague and ambiguous.

Indirect Lobbying

Both bills define lobbying to include both "direct" and "indirect" forms of lobbying activity. Thus, any "solicitation" of another person to "make a communication . . . in order to influence the policymaking process" can trigger the registration, recordkeeping and reporting requirements proposed in these bills.

This attempt to impose these onerous requirements upon persons engaged in "indirect" lobbying activities, according to pro ponements of these bills, is designed to close one of the so-called "gaping holes" created by the Supreme Court in Harriss. But, as I have emphasized previously, the Supreme Court construed "lobbying activity" to mean "direct" lobbying in order to avoid constitutional difficulties.

In United States v. Rumely, 345 U.S. 41 (1953), the Supreme Court determined that:

> . . . the phrase "lobbying activities" readily lends itself to the construction placed upon it below; namely, "lobbying in its commonly accepted sense," that is, "representation made directly to the Congress, its members, or its committees," . . . and does not reach . . . attempts "to saturate the thinking of the community." 345 U.S. at 47 (citations omitted).

This interpretation was used in Rumely "in order to avoid serious constitutional doubt", 345 U.S. at 47 - the identical rationale, as previously noted, subsequently used by the Supreme Court in Harriss.

It should be noted in pas sing that nowhere in the text of the 1946 Act does the word "lobbying" appear. In point of fact, the present law is couched in terms of attempts "to influence, directly or indirectly, the passage or defeat of any legislation." P.L. 79-601, §307(b); 2 U.S.C. §266(b). Similarly, both S.815 and S.774, while employing the term "lobbying", define "lobbying" as attempts "to influence the policymaking process."

There should be no question that the "serious constitutional doubt" which was expressed by the Supreme Court in Harriss and Rumely cannot be abated by the minor semantic changes proposed in these bills.

Some of the substantial constitutional difficulties inherent in attempts to "regulate" "indirect" lobbying were suggested by Messrs. Justice Douglas and Black in their dissent in Harriss (in which they urged strongly that the entire 1946 Act should be held unconstitutional):

> What contributions might be used "principally to aid" in influencing "directly or indirectly, the passage or defeat" of any such measure by Congress? When is one retained for the purpose of influencing the "passage or defeat of any legislation"?
>
> (1) One who addresses a trade union for repeal of a labor law certainly hopes to influence legislation.
>
> (2) So does a manufacturers' association which runs ads in newspapers for a sales tax.
>
> (3) So does a farm group which undertakes to raise money for an educational program to be conducted in newspapers, magazines, and on radio and television, showing the need for revision of our attitude on world trade.
>
> (4) So does a group of oil companies which puts agents in the Nation's capital to sound the alarm at hostile legislation, to exert influence on Congressmen to defeat it, to work on the Hill for the passage of laws favorable to the oil interests.
>
> (5) So does a business, labor, farm, religious, social, racial, or other group which raises money to contact people with the request that they write their Congressman to get a law repealed or modified, to get a proposed law passed, or themselves to propose a law.
>
> Are all of these activities covered by the Act? If one is included why are not the others? 347 U.S. 630.

Indeed, if this legislation is enacted, both the potential "lobbyists" and those charged with enforcing the law will be required to assess the subjective intent of those persons making such communications. Must the "lobbyist" clearly and conspicuously solicit the reader to write a "Federal officer or employee"? What is the line between a "solicitation", "suggestion" and "information"?

It is precisely this type of "guessing game" which not only offends constitutional due process standards but, as previously noted, inhibits citizens in the exercise of their constitutional rights.

Voluntary Membership Organizations

As presently drafted, both S.815 and S.774 contain a "gaping hole" which may permit certain special interest groups to avoid the registration, recordkeeping and reporting requirements proposed.

Both bills define a "voluntary membership organization" as "an organization composed of individuals who are members thereof on a voluntary basis and who, as a condition of membership, are required to make regular payments to the organization." (Emphasis added.)

Thus, three conditions must be met in order for the voluntary organization to be subject to the requirements imposed upon a "lobbyist."

1. membership must be voluntary;

2. dues, fees or other charges must be paid on a regular - e.g. annual, semi-annual, or monthly - basis;

3. payment of such dues, fees or other charges is a condition precedent to membership.

Presumably, if one or more of these tests is not met, then the organization would not be subject to the requirements of the proposals. (It is our understanding that the individual members or employees of the organization may be subject to the provisions.)

This formulation may exempt some broad-based special interest organizations very active in lobbying. Notwithstanding the impact of this provision upon the present operations of existing organizations, it would be quite easy for an organization that wished to do so, to amend its charter, bylaws, or operational aspects in order to avoid certain of the requirements of the bills.

Obviously, such an artificial distinction would be in blatant disregard of the principle of equal protection under the law. Although the Fourteenth Amendment specifically states that "no state" shall deny equal protection under the law, such discrimination in a Federal statute would hardly be seemly, to say the least. Indeed, as the Supreme Court has repeatedly stated, "while the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.' " U.S. Department of Agriculture v. Moreno, 413 U.S. 528, 533 (1973), citing Schneider v. Rusk, 377 U.S. 163, 168 (1964).

Notwithstanding the constitutional implications of this definition of a "voluntary membership organization," it is incredible that the sponsors of this legislation should favor any type of "loophole" through which any organization might escape any aspect of the "sunshine of disclosure" demanded of others.

Publication of Membership and Dues Information by Certain Voluntary Organizations.

One of the most questionable and highly discriminatory provisions of S.815 and S.774 is the requirement that voluntary membership organizations report (and, hence, make public) the names of and the amounts of each contribution received from its members if the member contributed more than $100 during a "quarterly filing period, or during that . . . period combined with the three immediately preceding." Therefore, voluntary organizations required to register would have to reveal the names of all members who contribute more than $100 per year in dues.

The major impact of this provision would be upon business associations -- trade associations and state, regional and local chambers of commerce, in particular. Some labor unions could also be affected, as well as an indeterminable number of other organizations of all kinds.

Some business associations, of course, publish their membership lists. Others do not, for good practical and policy reasons. Individual dues data, however, are treated as privileged and confidential in most cases. In many trade associations dues are based on production, sales, or shipments. Here, publication of dues information which could readily be translated into one or more of these factors could not only breach essential confidentiality but present a hazard under the antitrust laws.

Further, to publish names of members with dues allocations attributed to them for efforts to influence legislation would convey an unwarranted implication that each listed member supported, without reservation, any and all positions taken by the association. Indeed, some members may join and support the organizations specifically because of programs and purposes unrelated to any so-called "lobbying" of the Legislative or Executive Branches.

Thus, these bills would create a distorted view of the functions of voluntary organizations and the interests of their members. The fact that such organizations, like the Congress, operate on the basis of majority rule would be lost upon those who review and publicize the registration forms mandated by the bills.

No legitimate and responsible organization will object to providing information on the procedures by which policy decisions constituting positions of the organization are reached. This is, indeed, a basic element in the evaluation of representations made on behalf of membership organizations. But such information can readily be obtained without superimposing any new mandatory requirements for reporting and disclosure, including membership lists.

Finally, the constitutional implications of this provision cannot be ignored. In numerous cases the Supreme Court has held that the involuntary disclosure of membership lists is unconstitutional. The principles enunciated in these cases can lead only to the conclusion that the provision in question does not meet the test of constitutionality. A memorandum in support of this conclusion is attached as Appendix A.

Publications of Voluntary Membership Organizations

Both S.815 and S.774 make suspect any publication of a voluntary membership organization. The bills exempt from the definition of "lobbying" a communication or solicitation by a newspaper, magazine, other periodical distributed to the general public, a radio or television broadcast, or a book. Any publication of a voluntary membership organization, however, including a publication directed to the general public and predominantly displaying the name of a voluntary membership organization, is suspect as a "lobbying piece."

As previously indicated, such classifications must necessarily rely upon the subjective intent imputed to the authors of the publication in question by the supervisory authority. Many publications may be designed to provide information on pending legislation, for example. Are such publications to be suspect as "lobbying pieces" because at other times the publisher has urged the members of the organization to express their own opinions to their respective Congressmen?

Not only does this provision create numerous opportunities for substantial differences of opinion among reasonable men; it also creates an irrational classification.

Indeed, the proposed bills make second-class citizens out of the voluntary organizations which publish "communications" or "solicitations" in their own newsletters or other house organs and the organizations' members. Publishers of newsletters of general circulation need not register and report under the terms of these bills, provided that the publisher is not a voluntary membership organization as defined in the bills. But a voluntary organization which publishes a newsletter or magazine - even one of general circulation not restricted solely to the membership - would be subject to the provisions of these bills.

The logic of this provision escapes us. If anything, it demonstrates that constitutional limitations effectively preclude the attainment of a utopian scheme of disclosure.

Chilling Effect

Even Assuming, arguendo, that reasonable specificity could be introduced into these proposals and that both "direct" and "indirect" lobbying could be subject to the "regulation" contemplated by their sponsors, the proposals would have an impermissible chilling effect upon the exercise of First Amendment rights by citizens.

We would direct the attention of this Committee, in the first instance, to the definition of a "lobbyist" contained in S.815. S.815 not only provides various monetary tests for determining who is a "lobbyist" but also states that any person who "in the course of lobbying during a quarterly filing period, communicates orally on eight or more separate occasions with one or more Federal officers or employees" must register and report.

The necessary result of such a definition is not only to ensnare within the entanglements of this proposal the corporate executive who occasionally visits Washington on company business, but also the proverbial "little old lady in tennis shoes" who habitually telephones her Congressman's district office to urge her Representative to support or defeat a particular piece of legislation. This occasional "lobbyist" who seeks to "put her two cents" into the legislative process is subject to the same requirements as the retained, professional lobbyist whose principal purpose of employment is to engage in "direct" lobbying.

We submit that if our proverbial "little old lady in tennis shoes" were informed that she is a "lobbyist," she would be shocked and appalled. Furthermore, if she were then informed that she must file a notice of registration, retain records and file quarterly reports, she would, in all probability, decide, to borrow another phrase, that "the game is not worth the candle." Alternatively, she would make certain that she made only seven telephone calls per calendar quarter; and, if she miscounted, she would be subject to criminal and civil penalties.

The same considerations apply, of course, to the communications to any Member of Congress by any of that Member's constituents, as well as non-constituents.

In short, this legislation should be reported only if this Committee desires to limit the access of private citizens to their government, or the free flow of communication between Members of Congress and their constituents, or anyone else, on any "policy matter."

Some additional examples would further demonstrate the chilling effect these proposals will necessarily have on constitutional rights.

Much environmental legislation currently provides for the development of state, regional and local implementation plans. Under the terms of this legislation, if concerned citizens within an air quality region, for example, meet with the local administrators of the Environmental Protection Agency to develop and perfect such a plan, the citizens may be subject to the requirements which these bills would impose. This unfortunate development would result even if the Federal authorities requested the meetings.

Indeed, S.815 and S.774 exempt from the definition of "lobbying" only testimony given to a Congressional committee or Federal department or agency. Therefore, any "informal" meetings between citizens and agency officers or employees may trigger the requirements contained in these proposals.

S.774 is even more restrictive because it exempts a "written statement . . . to any Federal executive department, agency, or entity at the request of such department, agency, or entity." (Emphasis added). Therefore, all oral statements and those written statements which are not in response to a request for testimony shall be deemed to be "lobbying" activities.

One further note with respect to testimony is appropriate. S.815 exempts from the definition of "lobbying" any testimony or statement "which is a matter of public record." If a Congressional committee, however, should decide to accept any testimony in camera, such testimony would constitute a "lobbying" activity. Thus, a citizen called to testify before a closed hearing might become a lobbyist, even if that individual were willing and perhaps even desired to testify for the public record.

Previous witnesses before this Committee -- in fact the proponents of this bill -- have provided one further example of the absurdity of this legislation and its potential chilling effect. Under the terms of S.815, if a citizen meets with the 8 members of his or her Congressional delegation at one meeting, to discuss a piece of legislation (or proposed legislation), for example, then he or she is not a lobbyist. If that same citizen meets with each of these members of his or her delegation separately on the same day in order to discuss the same piece of legislation, then he or she is a "lobbyist" for purposes of S.815. Given the enormous obligations imposed upon a "lobbyist" by S.815, can this Committee genuinely expect the so-called "casual lobbyist" to do anything but "play the numbers game?"

We do not mean to imply that the "rule of eight" contained in S.815 is the only source of the chilling effect upon First Amendment rights.

Both S.815 and S.774 relate the definition of a "lobbyist" to certain income and expenditure tests. Both S. 815 and S.774 require each "lobbyist" to maintain records of (and, therefore, report and make public) his or her total income and that portion of income attributable to "lobbying."

To many individuals, the amount and source of income is confidential information. Indeed, the Internal Revenue Code imposes strict limitations upon access to information contained in tax returns and provides significant penalties for divulgence of such information by government employees.

In light of this tradition of confidential treatment of income-related data, S.815 and S.774, at the very least, border on an intrusion into an individual's privacy. Even if the proponents of this legislation could justify the making public of income related to the "lobbying activity" of individuals, total income statistics need not be revealed to further some vague and ill-defined "public interest."

Under the proposed laws, however, even an individual who is no more than an incidental or occasional lobbyist is required to determine whether he or she is willing to surrender his or her privacy in order to exercise a constitutionally guaranteed right. Such a trade-off constitutes an impermissible chill on First Amendment rights.

Indeed, the touchstone of these proposals is the ability to require trade-offs in order for individuals to exercise their constitutional rights. The implicit contract upon which this legislation is premised is the following: "If you want to petition the government with some degree of regularity, Mr. Citizen, then you must fill out the forms and keep the records which we prescribe."

The constitutional rights at issue here cannot be contingent upon adherence to some bureaucratic regulations. The issue is not self-censorship but whether the government can convert a constitutionally protected right into a licensed activity with unrealistic and unnecessarily burdensome requirements as the license fee.

Registration, Recordkeeping and Reporting

I want to emphasize that the real concern of the business community is not with the concept of any reasonable disclosure per se, but rather with the complex, costly and time-consuming recordkeeping and reporting requirements proposed in these bills. These requirements are compounded by the need for constant and intensive consideration of specific "communications", "solicitations" or other "activities" in order to determine whether or not they are covered by the proposed law, and, if so, how properly to account for the related expenditures or receipts.

Attached as Appendix B is a summary of the various registration, recordkeeping and reporting requirements contained in S.815 and S.774. We urge the Committee to consider these provisions in the context of the day-to-day life of each individual citizen who desires to make an oral presentation -- whether in person or by telephone -- to his or her Senator, Representative or to an officer or employee of some Federal agency or department. Similar consideration should be given to the impact upon legitimate business and other organizations and their representatives.

Further, we urge the Committee to consider this critical point: Although the proposals do not require persons to file notices of registration and reports until they have become "lobbyists", as defined in the respective bills, each person who may qualify as a "lobbyist" during a calendar quarter must retain records in anticipation of becoming a "lobbyist."

Alternatively, that person will be required to reconstruct expenditures and recall "communications" or "solicitations" which may have occurred nearly three months previously.

There may be some for whom these requirements will not present a serious problem. But it should be recognized and clearly understood that the impact is not only on those who are clearly subject to these requirements.

Anyone who engages in any of the myriad activities within the scope of the bills will have to undertake the continuous logging of activities, virtually minute-by-minute. A failure to identify a "trigger-point," or to account for some covered activity, will expose that person to the sanctions prescribed for violators of the law.

Many knowledgeable business and organization executives, as well as professionals, academicians, and persons from all walks of life, whose views, information, or expertise is useful and valuable to the formulators of legislative or administrative policy, can be expected to be put under restraints by the imposition of such requirements, and the accompanying potential need for far-reaching public accounting of their affairs.

Unquestionably, a great many of those who can make the most constructive and objective contribution to the sound formulations of governmental policy are compensated at a rate which would mean that a single covered act would make them lobbyists, with all of the attendant obligations. Under the terms of S.774, any person who receives $250 or more per calendar quarter as income for "lobbying . . . whether such income is the prorated portion of total income attributable to that lobbying, or is received specifically for the lobbying" must comply with the Act's requirements. In addition, the employer or client of such person must also register as a "lobbyist." S.815 would apply the identical expenditure test to an employer or client; the income test, as previously noted, would apply only when "lobbying" was a "substantial purpose of employment."

To emphasize the extreme reach of these proposals, consider again our "little old lady in tennis shoes" who can stay at home and use her telephone. Even for her, the task imposed by these bills probably would constitute a major undertaking. Indeed, citizens subject to this legislation would probably approach the quarterly reporting chore with the same distaste and foreboding with which they approach the preparation of their yearly tax returns.

Even for the businessperson who is certain to qualify as a "lobbyist", however, these proposals present no small task. This problem would be compounded in the case of voluntary membership organizations subject to these bills. I can speak from my personal experience of 30 years with the National Chamber when I state that it would be a monumental and wastefully costly task for us to monitor

every phase of the activities of the organization and its employees, to collect, collate, evaluate, verify, determine cost data for each covered item, and deliver all the materials, including copies of mailings to our membership, descriptions of various meetings of our members and lists of those in attendance, and a myriad of other information -- all of which may arguably be required by the terms of these bills. It is disheartening to contemplate such a wasteful undertaking which would be of little, if any, use to Members of Congress in evaluating the merits of any positions expressed by the Chamber. Logically, one would expect that the evaluation process would already have taken place in the consideration by Congress of the Chamber positions communicated to it.

The impact on other membership organizations would be similar, and would be especially hard on those smaller associations and state and local chambers of commerce that may be vital instrumentalities for the representation of and as spokesmen for lines of business or industry made up of small firms or for the communities or areas which they serve.

This Committee should take careful note that, in cataloging the registration, recordkeeping and reporting requirements, the authors of these bills have not limited the information which may be collected. Indeed, the Federal Election Commission, or other supervisory authority, is given virtual carte blanche to determine what information is necessary and appropriate. These proposals constitute an open-ended, unrestricted and probably unprecedented authorization to demand information completely devoid of any protection under rights of privacy or protection of confidential or privileged data in an era when there has been widespread public concern about the dangers of governmental abuse of investigative authority. The authority contained in S.815 and S.774 may permit the subversion -- if not the negation -- of the right of privacy of individuals without the accrual of any concomitant benefit to the public.

It would be a short step from the present requirement that a "lobbyist" reveal all sources of income to requiring the filing of net worth statements both for the "lobbyist" and his or her immediate family. The ever-lurking prospect of being subjected to intensive investigations and audits covering one's personal affairs is little short of alarming. In brief, the

opportunity for compounding the requirements and making them even more onerous is ever-present. As the provisions of these bills bear witness, an extraordinarily broad range of information might be required in the name of "sunshine."

Little solace may be taken from the provision in S.815 that permits the supervisory authority to "modify" the registration, recordkeeping and reporting requirements "where such requirements, due to extenuating or unusual circumstances, are overly burdensome for the lobbyist involved or unnecessary for the full disclosure of lobbying activities, provided such modifications are consistent with the disclosure intent of this Act." (S.774 has no comparable provision.)

This provision is merely precatory insofar as total discretion for granting such a modification lies with the supervisory authority. Further, there is no indication of Congress' understanding of either what constitutes an "extenuating or unusual" circumstance or when the requirements become "overly burdensome." Absent some congressionally imposed standards or guidelines, it would be extremely difficult for a "lobbyist" to make the necessary arguments successfully. Rather, the enumeration of specific registration, recordkeeping and reporting requirements in the bill would be deemed to be prima facie evidence that the requirements are not unduly burdensome. Consequently, any person who seeks a modification would have a major -- and, I submit, an almost impossible -- obstacle to overcome.

As we had suggested previously, many citizens, as a direct consequence of this legislation, will ask the 64-dollar question: What is the benefit to me in attempting to maintain a dialogue with government officials when the condition for exercising this right is compliance with these requirements?

We urge this Committee to ask the converse of that question in reviewing each provision of this legislation: What is the benefit to be derived from this requirement in light of the potential burden and sanctions it places upon my constituents in the exercise of their constitutional rights? What is the value, for example, in requiring that "lobbyists" submit copies of all "written communications used . . . to solicit other persons to lobby" and placing these documents in a public file?

The cost-benefit analysis which we urge this Committee to undertake should not be measured solely in dollar costs to those subject to the proposed Acts and to the government for its administration. While these factors are of obvious importance, they would be too crass a yardstick for determining the value of these proposals.

At the "bottom line" is the cost in terms of constitutional rights. The Committee should -- and, indeed, must -- review the specific provisions of these bills in this context. To do less would be a disservice to the citizens of this Nation.

Administration

Both S.815 and S.774 would vest authority for administration of the proposed lobbying laws in the Federal Election Commission. The powers which would be granted to the Commission would be both enormous and complex, permitting the Commission to administer the totality of the law.

The National Chamber would not oppose granting administrative authority to the Federal Election Commission. We do urge the Committee to consider with due care the scope and nature of the responsibilities and authority which would be delegated and the importance of feasible and equitable standards and guidelines for the exercise of these functions. Too, there should be careful and thorough evaluation and appraisal of the manpower, physical facilities, and related needs essential to these functions.

S.774 makes no reference whatever to the Administrative Procedure Act. This bill, if enacted, would leave it to the Commission to determine its practices and procedures without the benefit of any Congressional guidance.

The Federal Election Commission or other administrative body would have enormous power in regulating and adjudicating constitutional rights. At the very least, the Administrative Procedure Act should be applicable to the determinations and decision-making processes of any instrumentality delegated such broad authority.

"Lobbying" in the Public Interest

The stated purpose of S.815, contained in §2(b), is that the unprecedented and burdensome recordkeeping and reporting requirements proposed are necessary in order that Members of Congress, the Executive Branch, and their respective staffs may "better evaluate" the efforts of those who advocate positions concerning public policy matters.

It is unlikely that Members of Congress or the Executive will hurry to the files of "lobbying" reports every time a "lobbyist" appears before or otherwise communicates with them. Rather, any responsible legislator or official could readily and would verify the credentials or the bona fides of anyone making representations to him as a spokesperson for any "lobby" group which was unfamiliar to the official being "lobbied."

The proponents of this legislation point to the "sinister", "secretive" and "darker side" of lobbying as justifications for these proposals. Indeed, earlier testimony to this Committee emphasized that proponents anticipate that the disclosure of $10 lunches and gifts of $20 tie clips will introduce a heightened measure of integrity into the processes of the Legislative and Executive Branches.

I am astounded by the implicit assumption that a Federal officer or employee, elected or appointed, could be "bought" or in some way compromised by such token gratuities. I honestly do not believe that any individual would permit his or her integrity to be so easily and cheaply traded. And I do not believe that there are many in the Legislative or Executive Branch who can be bought at any price.

At the same time, such legislation will not -- and cannot -- deter individuals whose intent is to corrupt by offering bribes or otherwise violating existing law -- or anyone who might succumb to the temptation to sell himself or herself. Indeed, no proponent of these proposals has demonstrated that the present statutory prohibitions contained in the Criminal Code are inadequate to deter unlawful conduct. An individual intent upon commiting such criminal acts will most certainly ignore the requirements for recordkeeping and reporting contained in these bills.

The inevitable result of this legislation will be the creation of a crazy quilt of rules and regulations, subjective judgments and distinctions without real differences which would delight a medieval scholastic.

The First Amendment does not tolerate the creation of a lobbying law which will "cover" the corporate or organization executive but exempt the interested private citizen. The First Amendment does not permit the use of vague, ambiguous and ill-defined terms as a means of imposing a virtually unlimited range of sanctions applicable to free speech and petition. The First Amendment does not permit the promulgation of requirements that are so restrictive that they "chill" First Amendment rights.

The proponents of this legislation have been among the first to acknowledge the positive role which lobbyists play in providing information and arguments in furtherance of the democratic process. S.815 and S.774 will have the inevitable effect of curtailing the effective operation of our government to the extent that citizen "lobbyists" are deterred from making their views known to members of the Legislative and Executive Branches.

In all sincerity, I can contemplate no result which would be more of a disservice to our society and our system.

Mr. Justice Jackson, in his dissenting opinion in Harriss, stated what should be the guiding precept of this Committee in its deliberations on these bills:

> The First Amendment forbids Congress to abridge the right of the people "to petition the Government for a redress of grievances." If this right is to have an interpretation consistent with that given to other First Amendment rights, it confers a large immunity upon activities of persons, organizations, groups and classes to obtain what they think is due them from government . . . but we may not forget that our constitutional system is to allow the greatest freedom of access to Congress, so that the people may press for their selfish interests, with Congress acting as arbiter of their demands and conflicts. 347 U.S. 635.

The duty of this Committee is clear; the Supreme Court has spoken; the Constitution must be upheld.

In summary, the National Chamber urges this Committee to reject these bills -- or any other similar proposals -- which violate fundamental constitutional rights, which inhibit the free and unfettered exercise of those rights, which create arbitrary and discriminatory classifications and categories and which impose administrative burdens disproportionate to any possible marginal public interest purpose asserted by the proponents of this legislation. These bills do not affect solely those individuals, associations or other organizations which engage in wide-scale "lobbying activities" and expend large sums of money.

Rather, these bills impact directly upon all citizens whenever they exercise their constitutional right to petition their government. In the final analysis, these proposals convert a constitutional right into a privilege which may be exercised only at significant personal expense, unjustified inconvenience, and under the constant danger of criminal or civil prosecution for overlooking some of the proposed Acts' myriad recordkeeping and reporting requirements.

Appendix A

The First Amendment and Disclosure of Membership Lists

Both S.815 and S.774 would require any voluntary membership organization subject to the proposed legislation to record and report (and, hence, make public) the names of and amount of dues paid by its members who contributed more than $100 in dues, fees or other contributions during any calendar quarter or during that period combined with the three immediately preceding calendar quarters. In light of a series of cases decided by the Supreme Court subsequent to the decision of the Court in United States v. Harriss, 347 U.S. 612 (1954), application of the provision would raise serious questions as to its constitutionality under the First Amendment.

First Amendment and Freedom of Association

The First Amendment provides that: "Congress shall make no law . . . 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." The right of peaceable assembly and association, whether on a regular or irregular basis, is "a right cognate to those of free speech and free press and is equally fundamental." De Jonge v. Oregon, 299 U.S. 353, 364 (1937).

NAACP v. Alabama

The first in the series of cases was National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449 (1958). The attorney general of Alabama brought a suit to enjoin the association from conducting further activities within, and to oust it from, the State on the grounds of its noncompliance with Alabama's Foreign-

Corporation Registration Statute. The attorney general sought, and the state court ordered, production of lists of the association's rank-and-file members as pertinent to the issue whether the NAACP was conducting intrastate business in violation of the statute.

Justice Harlan, speaking for a unanimous Court, held that the immunity from state scrutiny of membership lists, claimed by the association on behalf of the Alabama members, so related to the right of the members to pursue their lawful private interests privately, and to associate freely with others in doing so, as to come within the Fourteenth Amendment, which embraces the First Amendment (Gitlow v. New York, 268 U.S. 652 (1925)).

Pointing out the vice in disclosure of membership lists, Justice Harlan said: "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] . . . effective . . . restraint on freedom of association. . . . " Furthermore, he noted: "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident belief."

Balanced against this restraining effect, Justice Harlan said, is the justification for disclosure, which turns "solely on the substantiality of Alabama's interest in obtaining membership lists." The association had admitted its presence and conduct of activities in Alabama during almost 40 years, and it offered to comply in all respects with the qualification statutes, while maintaining its contention that the statute did not apply to it. Justice Harlan concluded: "We are unable to perceive that disclosure of the names of [NAACP's] . . . rank-and-file has a substantial bearing" on any issue presented to the Alabama Courts.

In reaching his conclusion, Justice Harlan distinguished a 1928 case, New York ex. Rel. Bryant v. Zimmerman, 278 U.S. 63 (1928), where the Court held that the Due Process Clause of the Fourteenth Amendment did not prevent the state from compelling disclosure of membership lists of the Ku Klux Klan. Justice Harlan said that "the

decision was based on the particular character of the Klan's activities involving acts of unlawful intimidation and violence." The Zimmerman case arose before the Court had fully outlined the right of association, and only a short time after the incorporation of the First Amendment into the Fourteenth.

Bates v. Little Rock

A second case, Bates v. Little Rock, 361 U.S. 526 (1960), involved the conviction of the custodians of records of NAACP branches for failure to comply with local regulations which required organizations operating within a municipality to file with a municipal official a financial statement showing names of all contributors. These regulations were amendments to ordinances, levying license taxes on persons engaged in businesses, occupations, or professions within the municipal limits.

Justice Stewart, who spoke for the Court, said that the decision turned "on whether the cities as instrumentalities of the State have demonstrated so cogent an interest in obtaining and making public the membership lists of these organizations as to justify the substantial abridgement of associational freedom which such disclosures effect." He went on: "It cannot be questioned that the governmental purpose upon which the municipalities rely is a fundamental one. No power is more basic to the ultimate purpose and function of government than the power to tax." (emphasis supplied.)

The Court found that the occupation taxes were based on the nature of the activity or enterprise conducted, upon earnings or income, and that there had been no showing that the NAACP branches were engaged in activity taxable under the ordinances, or had ever been regarded by tax authorities as subject to taxation under the ordinances.

Justice Stewart concluded: "On this record we can find no relevant correlation between the power of the municipalities to impose occupational license taxes and the compulsory disclosure and the publication of the membership lists of the local branches" of the NAACP.

Justices Black and Douglas concurred in the opinion, stating that "First Amendment rights are beyond abridgement either by legislation that directly restrains their exercise or by suppression or impairment through harrassment, humiliation, or exposure by government." (emphasis supplied.)

Shelton v. Tucker

The case of Shelton v. Tucker, 364 U. S. 478 (1960), is another case where the Supreme Court invalidated a statute, even though it involved an important right of the state -- the right to inquire into the fitness and competence of its teachers. The issue in the case concerned the constitutional validity of an Arkansas statute which compelled every teacher, as a condition of employment in a state-supported college, to file annually an affidavit listing without limitation every organization to which he had belonged or regularly contributed within the preceding five years.

In a 5-4 decision, Justice Stewart stated that there was no question as to the relevancy of the inquiry. However, the "Statute's comprehensive interference with the Association's freedom goes far beyond what might be justified in the exercise of the state's legitimate inquiry . . . ." The statute required the teacher to list every conceivable kind of associational tie -- social, professional, political, educational, or religious. "Many such relationships have no possible bearing upon the teacher's occupational competence or fitness."

Justices Frankfurter, Clark, Harlan, and Whittaker dissented. The dissenting Justices expressed the view that the statute did not transgress the constitutional limits of the state's authority to determine the qualifications of its teachers.

Louisiana v. NAACP

The attorney general of Louisiana commenced an action against the NAACP to enjoin it from doing business in the state. The NAACP asked for a declaratory judgment in a federal court that the Louisiana statutes were unconstitutional. One of the statutes prohibited a non-trading association from doing business in Louisiana if affiliated with a foreign non-trading association and if any of the officers or directors were members of subversive organizations, and required it to file annually an affidavit that none of the officers of the affiliate were a member of such a subversive organization. The other statute required that the principal officers of certain organizations operating in Louisiana file a list of the names and addresses of all their members and officers

in the state. A three-judge court entered a temporary injunction denying relief to the Attorney General of Louisiana and enjoining the enforcement of the statutes.

Striking down the two statutes as unconstitutional, Justice Douglas for the majority (366 U.S. 293, (1961)), cited Shelton v. Tucker, and stated that "any regulation must be highly selective in order to survive challenge under the First Amendment." Applying a balancing test, Justice Douglas stated: "At one extreme is criminal conduct which cannot have shelter in the First Amendment. At the other extreme are regulatory measures which, no matter how sophisticated cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights."

Justices Frankfurter and Clark filed concurring opinions. Justices Harlan and Stewart concurred in the result.

Communist Party v. Subversive Activities Control Board

After protracted litigation, the Subversive Activities Control Board entered an order requiring the Communist Party of the United States to register as a Communist-Action organization under Section 7 of the Subversive Activities Control Act (50 U. S. C., § 786). The Communist Party contended that the First Amendment prohibited Congress from requiring the registration and filing of information, including membership lists.

The opinion, 367 U. S. 1, (961), written by Justice Frankfurter, distinguished the case from NAACP v. Alabama, Bates v. Little Rock, and Shelton v. Tucker on the basis of "the magnitude of the public interests which the registration and disclosure provisions are designed to protect and in the pertinence which registration and disclosure bear to the protection of those interests." He also distinguished this case from the above cited because in those cases "there was no showing of any danger inherent in concealment, no showing that the state in seeking disclosure, was attempting to cope with any perceived danger."

He said that "Congress has found that there exists a world Communist movement, foreign-controlled, whose purpose it is by whatever means necessary to establish Communist totalitarian dictatorship in the

countries throughout the world, and which has already succeeded in supplanting governments in other countries. Congress has found that in furthering these purposes, the foreign government controlling the world Communist movement establishes in various countries action organizations which, dominated from abroad, endeavor to bring about the overthrow of existing governments, by force if need be, and to establish totalitarian dictatorships subservient to that form of government."

Pointing to the dangers brought out by the Congressional investigations, he stated: "Where the mask of anonymity which an organization's members wear serves the double purpose of protecting them from popular prejudice and of enabling them to cover over a foreign-directed conspiracy, infiltrate into other groups, and enlist the support of persons who would not, if the truth were revealed, lend their support . . . it would be a distortion of the First Amendment to hold that it prohibits Congress from removing the mask."*

In limiting his decision, Justice Frankfurter said: "It is argued that if Congress constitutionally enacts legislation requiring the Communist Party to register, to list its members, to file financial statements, and to identify its printing presses, Congress may impose requirements upon any group . . . nothing which we decide here remotely carries such an implication."

Gibson v. Florida Legislative Investigation Committee

In the case of Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963), the president of the Miami Branch of the NAACP was ordered to appear before a Committee of the Florida state legislature investigating infiltration of Communists into organizations operating in the field of race relations, and to bring with him membership records of the association which were in his possession or custody. However, he refused to produce these records for purpose of answering questions concerning membership in the NAACP; his refusal was based on the grounds that to bring the lists to the hearings and to utilize them

*Chief Justice Warren and Justices Douglas, Black, and Brennan dissented on various grounds. On the First Amendment issue, Chief Justice Warren and Justice Douglas and Brennan concurred with the majority and Justice Black dissented.

as a basis for this testimony would interfere with the free exercise of the Fourteenth Amendment associational rights of members of NAACP. A Florida state court adjudged him in contempt and the Florida Supreme Court affirmed. The U. S. Supreme Court reversed.

Writing for the majority, Justice Goldberg stated that the interests at stake are of "significant magnitude." The proper test, Justice Goldberg said, is whether the state has "convincingly" shown a substantial relation between the information sought and a subject of overriding and compelling state interest." He went on: "The prior holdings that governmental interest in controlling subversion and the particular character of the Communist Party and its objectives outweigh the right of individual Communists to conceal party membership or affiliations by no means require the wholly different conclusion that other groups -- concededly legitimate -- automatically forfeit their rights to privacy or association, simply because the general subject matter of the legislative inquiry is Communist subversion or infiltration. The fact that governmental interest was deemed compelling . . . to support the inquiries there made to membership in the Communist Party does not resolve issues here, where the challenged questions go to membership in an admittedly lawful organization."

Moreover, Justice Goldberg continued: "The strong associational interest in maintaining the privacy of membership lists of groups engaged in the constitutionally protected free trade in ideas and beliefs may not be substantially infringed upon . . . a slender showing . . ."

Justices Black and Douglas concurred in the opinion. Justices Harlan, Clark, Stewart and White dissented.

In his concurring opinion, Justice Douglas said: "In my view, government is not only powerless to legislate with respect to membership in any lawful organization; it is also precluded from probing the intimacies of spiritual and intellectual relationships in the myriad of such societies and groups that exist in this country, regardless of the legislative prupose sought to be served."

Justice White dissented on the ground that the decision insulted the Communist Party from effective legislative inquiry.

Conclusions

Secrecy of associations and organizations may under some circumstances constitute a danger which legislatures do not lack constitutional power to curb (Communist Party v. Subversive Activities Control Board). In determining whether a statute may be permitted to curb the freedom of association, there must be a balancing of interests (NAACP v. Alabama).

To strike such a balance, the Supreme Court has articulated several tests:

1. Does the government have a substantial interest or compelling purpose for restricting freedom of association? (NAACP v. Alabama; Bates v. Little Rock.)

2. Is the statute narrowly drawn, or is it so broad that it reaches beyond the limits necessary for attainment of the legislative purpose? (Shelton v. Tucker; Louisiana v. NAACP).

3. Is there a rational connection between the statute's requirements and the end to be accomplished? (Bates v. Little Rock).

The attempt to require disclosure of membership lists in S. 815 and S. 774 would seem to violate these three guidelines.

First, the government must show a substantial purpose. The cases where the government has succeeded in this showing involve a highly perceptible danger arising, either from foreign-controlled organizations bent on subversion (Communist Party v. SACB), or organizations using acts of "violence and intimidation." (Bryant v. Zimmerman).

On the other hand, the government has been unable to demonstrate substantial purpose, even in cases involving a "fundamental" governmental purpose (Bates v. Little Rock), or an interest of "significant magnitude." (Gibson v. Florida Investigation Committee). Consequently, forcing disclosure of membership lists of legitimate organizations merely because the Congress asserts that disclosure will in some manner enable Congress to "better evaluate lobbying activities" appears to lack the requisite substantiality.

Second, the scope of the bills is so broad and vague in its application that undoubtedly many organizations would be forced to reveal their membership lists to protect themselves from violating the act.

Lastly, it seems that it would be difficult to show a rational connection between the desire to "better evaluate lobbying activities" and the meaningless tangle of information provided. To state what might be required to make a membership list meaningful is to state the dangers of compulsory disclosure. It would be necessary to conduct a highly dangerous probe into the motivation for association membership and into the strength of each member's interest in, or support for, a particular policy.

Appendix B

Summary of Registration,
Recordkeeping and Reporting Requirements
Contained in S.815 and S.774

The following summary of the registration, recordkeeping and reporting requirements contained in S.815 and S.774 may be helpful to the reader in understanding and appreciating the extensive and detailed requirements proposed in these bills. Without such a review of these specific provisions it would be difficult to comprehend fully the implications of these proposals.

S.815 "Open Government Act of 1975"

Notice of Representation: Within 15 days after becoming a "lobbyist", any individual, firm or organization so designated must file a notice of representation. This notice must include information concerning the identity of the lobbyist, those for whom the lobbyist expects to perform lobbying services, and the financial terms of the lobbyist's employment. In addition, the lobbyist must identify the issues with which he expects to be concerned, those whom he will seek to influence, the form of communication to be used, and whether the communication will be for or against a particular measure or action. The lobbyist must also identify other persons who will be engaged in lobbying on behalf of the lobbyist, including any financial terms or conditions and the issues which the person expects to seek to influence.

In the case of voluntary membership organizations which are required to file a notice of representation, the approximate size of the membership must be stated and the methods by which a decision to engage in lobbying is made must be described.

Notices must be periodically updated to reflect any changes in the registrant's activities.

Records: Each lobbyist must maintain records prescribed for a period of at least two years after the date of the activity recorded. The proposed legislation requires that, at a minimum, the following information be recorded:

(1) total income of the lobbyist and the amount attributable to lobbying;

(2) name, address, principal place of business, occupation and position held in the business of each person on whose behalf lobbying is conducted and the amount received;

(3) lobbying expenditures, which are defined to include:

(a) the total expenditures of the lobbyist, and the amount of such expenditures attributed to lobbying;

(b) an itemization of any expenditure for lobbying which exceeds $10 in amount or value, including the identification of the person to or for whom the expenditure is made, the date of the expenditure, and a description of the nature of the expenditure;

(c) expenditures to employ any person who engages in lobbying on behalf of such lobbyist, and the amount received by each person so employed; and

(d) expenditures relating to research, advertising, staff, entertainment, offices, travel, mailings, and publications used in lobbying; and

(4) any other information that may be required.

In the case of a voluntary membership organization, only membership contributions greater than $100 during the quarterly filing period or during that quarter combined with the three immediately preceding such periods need be recorded. Thus, records must be maintained for each member who contributes more than $100 per year in dues, fees or other contributions.

Reports: Each lobbyist must file a report within 15 days of the close of each calendar quarter in which he engaged in lobbying. The following information is to be included:

(1) the name, address, occupation, place of business and position in the business of the reporting lobbyist;

(2) the name, address, occupation, place of business and position in the business of each person on whose behalf lobbying activities have taken place;

(3) each aspect of the policymaking process the lobbyist sought to influence;

(4) name, address, occupation, place of business and position in the business of each Federal officer or employee with whom the lobbyist communicated to influence the policymaking process;

(5) identification of the subject matter of each oral or written communication which expresses an opinion or contains information with respect to the policymaking process made by the lobbyist to any Federal officer or employee, or to any committee, department, or agency;

(6) the name, address, occupation, place of business, and position in the business of each person, including other lobbyists, who engaged in lobbying on behalf of the reporting lobbyist during the filing period, including --

(a) each decision of the policymaking process such person sought to influence, including bill, docket, or other identifying numbers where relevant; and

(b) each Federal officer or employee with whom such person communicated in order to influence the policymaking process.

(7) a copy of any written communication used by the lobbyist during the period to solicit other persons to lobby, an estimate of the number of such persons to whom such written communications were made, and an estimate of the number of such persons who engaged in lobbying;

(8) a description of the procedures, other than written communications, used by the lobbyist during the period to solicit other persons to lobby, an estimate of the number of such persons solicited, an estimate of the number of such persons who engaged in lobbying, the specific purpose of the lobbying, and the Federal officers or employees to be contacted;

(9) any expenditure made directly or indirectly to or for any Federal officer or employee which exceeds $25 in amount or value, and any expenditures made directly or indirectly to or for one or more such officers or employees which, in aggregate amount or value, exceed $100 in a calendar year, including the name, address, occupation, place of business, and position in the business of the person or persons making or receiving such expenditure or expenditures and a description of the expenditure or expenditures;

(10) copies of records required to be kept by the lobbyist to the extent such records pertain to the period; and

(11) such other information as may be required.

Voluntary membership organizations which must register as lobbyists must identify all members whose annual membership dues, fees or other contributions are greater than $100.

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Availability of Records to the Public: All notices of representation and reports must be made available for public inspection and copying no later than the end of the second day after such notices are filed. Each notice of representation must appear in the Federal Register within three days after receipt.

In addition, within 15 days after the close of each quarterly filing period, a compilation and summary, consisting of at least the following information, must appear in the Federal Register:

(1) the lobbying activities and expenditures pertaining to specific legislative or executive actions, including an identification of the lobbyists involved, an identification of the persons in whose behalf the lobbyists acted, and the amount of income received by the lobbyist from such persons; and

(2) the lobbying activities and expenditures of persons who share an economic, business, or other common interest in the legislative or executive actions which they have sought to influence.

S.774 "Public Disclosure of Lobbying Act of 1975"

Notice of Representation: S.815 and S.774 have virtually identical provisions.

Records: S.774 has virtually the same recordkeeping requirements as S.815, with two exceptions. First, S.774 requires a record of "each expenditure made directly or indirectly to or for any Federal officer or employee" rather than an itemization of "any expenditure for lobbying which exceeds $10." Second, S.774 does not require that entertainment expenditures be separately itemized as part of the total expenditures.

Reports: S.774 also requires "lobbyists" to file comprehensive reports on a quarterly basis. Although somewhat less detail is mandated by this proposal than by S.815, virtually the same "core" report items are sought in both bills.

Availability of Records to the Public: S.774 has virtually identical provisions to S.815 with respect to notices, records and reports which must be filed with the Commission and made a available to the public.

In addition, S.774 requires that records which must be maintained by officers and employees of the Executive Branch must be put in a case file or otherwise be made available to the public within two working days of receipt of communications related to the "policymaking process."



PROPOSED NEW FEDERAL LOBBYING LAWS

ANALYSIS AND COMMENT ON MAJOR BILLS IN 94th CONGRESS

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FOREWORD

Pending proposals for new "lobbying regulation" laws have serious and far-reaching implications for businessmen, firms, and all forms of business organizations.

The impact of these proposals would, of course, go far beyond the business community -- reaching untold numbers of individuals and organizations having an interest in the Federal legislative and policymaking process.

The main purpose of this publication, however, is to provide a comprehensive analysis of the principal proposals as they would affect business and business organizations.

To attempt to comprehend the unprecedented reach of these bills, their basic thrust must be recognized. In short, if an individual or an entity is covered, a requirement for registration and reporting is triggered -- under threat of imprisonment, fines, or both for noncompliance.

This means that everyone who, in the course of his business or employment, communicates with anyone in Congress or a Federal agency, or solicits others to do so, would have to keep detailed records of every such communication, solely to determine whether the registration and reporting requirements are applicable. Employers would have like obligations.

The determination whether each specific communication is a "covered" one will require a subjective evaluation of the intent of the communication. Whether a specific communication is to be construed as intended to "influence" some legislative or other governmental action (depending on the scope of any particular bill) will, in the final analysis, be subject to the opinion of the supervisory authority.

The potential burdensome and restrictive effect of these proposals warrants the most serious attention of everyone concerned with the exercise of basic constitutional rights of speech and petition.

PROPOSED NEW FEDERAL LOBBYING LAWS

Analysis and Comment on Bills Introduced in

94th Congress

A variety of bills are pending in the 94th Congress embodying new proposals regarding recordkeeping, registration, and reporting by individuals, firms, and organizations having interests in Federal legislation and policymaking.

These bills would replace the present Federal Regulation of Lobbying Act, enacted in 1946.

At issue in these bills are serious questions of freedom of speech and petition, and of the right to undertake efforts to make known and to urge acceptance of one's views on Federal legislation (or, in the case of some bills, "the policymaking process" of the Federal Government) -- without burdensome recordkeeping and reporting, and accounting for receipts and expenditures involved.

This memorandum deals with the following principal pending bills:

S.815 -- "Open Government Act of 1975," introduced by Senator Stafford (R-Vt.); cosponsored by Senators Brock (R-Tenn.), Clark (D-Iowa), Kennedy (D-Mass.), Percy (R-Ill.), Ribicoff (D-Conn.);

H.R.15 -- "Public Disclosure of Lobbying Act of 1975," introduced by Representative Railsback (R-Ill.);

H.R.44 -- "Legislative Activities Disclosure Act," introduced by Representative Price (D-Ill.);

H.R.1112 -- "Lobbying Information Act of 1975," introduced by Representative Teague (D-Tex.).

S.815 was referred to the Senate Government Operations Committee. H.R.15 was referred jointly to the House Committee on the Judiciary and the House Committee on Standards of Official Conduct. These bills are substantially similar and have the support of Common Cause.

H.R.44 and H.R.1112 have been referred to the House Committee on Standards of Official Conduct. These bills are identical to those introduced by the same Representatives in the 93rd Congress. Another bill pending before the same committee, H.R.18, "Federal Lobbying Disclosure Act," introduced by Representative Bennett (D-Fla.) is generally similar to the Price bill.

There follows a comprehensive analysis of the principal bills, followed by comments beginning at Page 18.

Stafford Bill

This is the most far-reaching "lobbying regulation" proposal yet presented, in terms of the types of individuals, firms and organizations required to register and report as "lobbyists," activities covered, and recordkeeping and reporting requirements.

In general, coverage extends not only to those individuals, firms, or organizations who receive compensation for seeking to influence the "policymaking process" of the Legislative and Executive Branches, but also to many who have contact with officers or employees of either branch of government for reasons incidental to their principal purpose for employment. In addition, individuals, firms, and organizations which engage in "indirect" or "grassroots" lobbying, as well as those engaged in "direct" lobbying, must report not only their activities, but also their sources of income, including the names of certain contributors, shareholders, or members.

The bill defines the "policymaking process" of the Legislative and Executive Branches to include all activities of the Congress and Federal agencies, including pending or proposed matters, actions, or activities. Any attempt to "influence" this process, either by making communications or soliciting others to make communications, is a "lobbying" activity, unless the communication is (1) in the form of testimony for the public record, (2) made by a Federal, State or local government officer or employee acting in his official capacity, or (3) a communication or solicitation,

other than a publication of a voluntary membership organization, made to the public through distribution "in the normal course of business" by a newspaper, magazine, broadcaster, or book. Communications of candidates made in the course of a campaign for Federal office and communications of political parties, generally, are also excluded from the definition of lobbying.

"Lobbyists": Individuals, firms or organizations who engage in "lobbying activities," as described above, must comply with the notification, recordkeeping and reporting requirements of the bill if they:

(1) receive $250 or more as compensation for employment or other activity during a quarterly filing period, or $500 or more during four consecutive quarterly filing periods "when lobbying is a substantial purpose of such employment or activity;" or

(2) make expenditures for lobbying, except for personal travel and lodging, of $250 or more during a quarterly filing period, or of $500 or more during four consecutive quarterly filing periods; or

(3) in the course of lobbying during a quarterly filing period, communicate orally on eight (8) or more separate occasions with one or more officers or employees of the Legislative or Executive Branches.

Any individual, firm or organization who meets any one of the three criteria enumerated above is covered.

This definition of "lobbyist" specifically rejects the "principal purpose" test in the Regulation of Lobbying Act of 1946. Under the first criterion, where a "substantial" purpose of an individual's, firm's, or organization's employment or activity is to influence the policymaking process, and the income test is met, that individual or entity would be a lobbyist.

The second test for determining whether an individual, firm or organization is a lobbyist is predicated upon whether "expenditures" are made to influence the policymaking process. Determination as to what is an "expenditure" requires reference to the recordkeeping and reporting requirements of the bill.

The third criterion is totally divorced from any consideration of income or expenditures related to "lobbying." Any oral communications, whether in person or by telephone, made on eight or more separate occasions with one or more officers or employees of the Legislative or Executive Branches, which are designed to influence the policymaking process, would subject an individual, firm or organization to the requirements proposed in this bill.

Notice of Representation: Within 15 days after becoming a lobbyist, any individual, firm or organization so designated must file a notice of representation. This notice must include information concerning the identity of the lobbyist, those for whom the lobbyist expects to perform lobbying services, and the financial terms of the lobbyist's employment. In addition, the lobbyist must identify the issues with which he expects to be concerned, those whom he will seek to influence, the form of communication to be used, and whether the communication will be for or against a particular measure or action. The lobbyist must also identify other persons who will be engaged in lobbying on behalf of the lobbyist, including any financial terms or conditions and the issues which the person expects to seek to influence.

In the case of lobbyists for voluntary membership organizations or voluntary membership organizations which are required to file a notice of representation, the approximate size of the membership must be stated and the methods by which a decision to engage in lobbying is made must be described.

Notices must be periodically updated to reflect any changes in the registrant's activities.

Records: Each lobbyist must maintain records prescribed for a period of at least two years after the date of the activity recorded. The proposed legislation requires that, at a minimum, the following information be recorded:

(1) total income of the lobbyist and the amount attributable to lobbying;

(2) name, address, principal place of business, occupation and position held in the business of each person on whose behalf lobbying is conducted and the amount received;

(3) lobbying expenditures, which are defined to include:

(a) the total expenditures of the lobbyist, and the amount of such expenditures attributed to lobbying;

(b) an itemization of any expenditure for lobbying which exceeds $10 in amount or value, including the identification of the person to or for whom the expenditure is made, the date of the expenditure, and a description of the nature of the expenditure;

(c) expenditures to employ any person who engages in lobbying on behalf of such lobbyist, and the amount received by each person so employed; and

(d) expenditures relating to research, advertising, staff, entertainment, offices, travel, mailings, and publications used in lobbying; and

(4) any other information that may be required.

A voluntary membership organization must record contributions (including dues, fees, etc.) from any member greater than $100 during the quarterly filing period or during that quarter combined with the three immediately preceding periods.

It should be noted that "voluntary membership organization" is defined as "composed of individuals who are members on a voluntary basis and who, as a condition of membership, are required to make regular payments to the organization." This may be construed to exempt some broad-based organizations with extensive legislative activities, claiming to have no such condition of membership.

Reports: Each lobbyist must file a report within 15 days of the close of each calendar quarter in which he engaged in lobbying. The following information is to be included:

(1) the name, address, occupation, place of business and position in the business of the reporting lobbyist;

(2) the name, address, occupation, place of business and position in the business of each person on whose behalf lobbying activities have taken place;

(3) each aspect of the policymaking process the lobbyist sought to influence;

(4) name, address, occupation, place of business and position in the business of each Federal officer or employee with whom the lobbyist communicated to influence the policymaking process;

(5) identification of the subject matter of each oral or written communication which expresses an opinion or contains information with respect to the policymaking process made by the lobbyist to any Federal officer or employee, or to any committee, department, or agency;

(6) the name, address, occupation, place of business, and position in the business of each person, including other lobbyists, who engaged in lobbying on behalf of the reporting lobbyist during the filing period, including --

(a) each decision of the policymaking process such person sought to influence, including bill, docket, or other identifying numbers where relevant; and

(b) each Federal officer or employee with whom such person communicated in order to influence the policymaking process.

(7) a copy of any written communication used by the lobbyist during the period to solicit other persons to lobby, an estimate of the number of such persons to whom such written communications were made, and an estimate of the number of such persons who engaged in lobbying;

(8) a description of the procedures, other than written communications, used by the lobbyist during the period to solicit other persons to lobby, an estimate of the number of such persons solicited, an estimate of the number of such persons who engaged in lobbying, the specific purpose of the lobbying, and the Federal officers or employees to be contacted;

(9) any expenditure made directly or indirectly to or for any Federal officer or employee which exceeds $25 in amount or value, and any expenditures made directly or indirectly to or for one or more such officers or employees which, in aggregate amount or value, exceed $100 in a calendar year, including the name, address, occupation, place of business, and position in the business of the person or persons making or receiving such expenditure or expenditures and a description of the expenditure or expenditures;

(10) copies of records required to be kept by the lobbyist to the extent such records pertain to the period; and

(11) such other information as may be required.

Voluntary membership organizations which must register as lobbyists and lobbyists for such entities must identify all members whose annual membership dues, fees or other contributions are greater than $100.

Availability of Records to the Public: All notices of representation and reports must be made available for public inspection and copying no later than the end of the second day after such notices are filed. Each notice of representation must appear in the Federal Register within three days after receipt.

In addition, within 15 days after the close of each quarterly filing period, a compilation and summary, consisting of at least the following information, must appear in the Federal Register:

(1) the lobbying activities and expenditures pertaining to specific legislative or executive actions, including an identification of the lobbyists involved, an identification of the persons in whose behalf the lobbyists acted, and the amount of income received by the lobbyist from such persons; and

(2) the lobbying activities and expenditures of persons who share an economic, business, or other common interest in the legislative or executive actions which they have sought to influence.

Administration: The Federal Election Commission would have the duty to administer the law. The Commission would have broad investigatory and rulemaking authority and would also be empowered to formulate policy, prescribe forms, recommend uniform bookkeeping, and investigate and encourage compliance. The Commission may also modify specific requirements to avoid undue burden, provided that any such modifications appear in the Federal Register and are available for comment for a period of 10 days prior to granting the modification.

Advisory Opinions: The Commission is authorized to render advisory opinions upon the written request of any person. Any request must be made public and all opinions be open for written public comment. Any person with respect to whom an advisory opinion is rendered who acts in good faith in accordance with the opinion shall be deemed to have complied with the law.

Effect on Internal Revenue Code: The notices of representation, records and reports mandated by this bill may not be taken into consideration for purposes of determining whether a substantial part of the activities of an organization consist of carrying on propaganda or otherwise attempting to influence legislation.

Enforcement: The Federal Election Commission would have primary responsibility to investigate alleged violations and institute civil actions to halt or otherwise correct such violations. Individuals, firms or organizations must be notified if they are accused of any violation and the individuals, firms or organizations so accused have the right to a hearing before the Commission.

Enforcement actions may also be referred to the Attorney General for either civil or criminal prosecution. If, after a hearing before the Commission, the Commission requests that the Attorney General initiate a civil action, the Attorney General must institute the suit.

Any civil or criminal action is to be expedited by the court in which the suit is instituted or to which the suit is appealed.

Judicial Review: Any suit testing the constitutionality of the Act after enactment or seeking a declaratory judgment, would be instituted in the district court and placed on an expedited calendar both in the district and the appellate courts.

Sanctions: Any lobbyist who fails to comply with the notice, reporting and recordkeeping requirements would be fined not more than $1000 and be required to comply retroactively.

Penalties for knowing and willful violations, including falsifying any notice or report filed with the Commission, are set at not more than $10,000 or imprisonment for not more than two years.

Railsback Bill

The Railsback proposal substantially parallels the Stafford bill.

In general, its coverage, like that of the Stafford bill, extends to individuals, firms, or organizations who seek to influence the "policymaking process" of the Executive and Legislative Branches by engaging in "direct" or "indirect" lobbying activities.

Exemptions for certain activities are differently defined than in the Stafford bill. For instance, communications to a Federal agency or department are exempt only if made at the request of the agency or department. In addition, communications by State or local officials are not excluded, as in the Stafford bill.

"Lobbyists": Individuals, firms or organizations who engage in "lobbying activities," as described above, must comply with the notification, recordkeeping and reporting requirements of the bill if they:

(1) receive income of $250 or more for such lobbying during a quarterly filing period, whether such income is the prorated portion of total income attributable to that lobbying or is received specifically for the lobbying;

(2) receive income of $500 or more for such lobbying during a total of four consecutive quarterly filing periods, in each period of those four which begins after that total of $500 has been received;

(3) make an expenditure of $250 or more, except for personal travel, for lobbying during that period; and

(4) make an expenditure of $500 or more for lobbying during a total of four consecutive quarterly filing periods, in each period of those four which begins after that total of $500 has been expended.

It should be noted that the Railsback bill uses a conjunctive test for determining whether an individual, firm or organization is a "lobbyist" while the Stafford bill uses a disjunctive test. Thus, it appears that, in order to be a "lobbyist" within the meaning of the Railsback bill, one must meet both the income and expenditure tests enumerated above.

As in the Stafford bill, the "principal purpose" test of the Regulation of Lobbying Act of 1946 would no longer apply. The dollar limitations recited in the bill are the only relevant tests of a covered "lobbyist."

The definition of "expenditures made for lobbying activities" requires reference to the recordkeeping and reporting requirements of the bill. Thus, "lobbyists" must keep records of the total expenditures for lobbying, itemizing expenditures which are (1) made to employ lobbyists, and (2) made for research, travel,advertising, staff, offices, mailings and publications. Each expenditure made directly or indirectly to or for any Federal officer or employee must be recorded.

Notice of Representation: The Stafford and Railsback bills have virtually identical provisions.

Records: The Railsback bill has virtually the same recordkeeping requirements as the Stafford bill, with two exceptions. First, the Railsback bill requires a record of "each expenditure made directly or indirectly to or for any Federal officer or employee" rather than an itemization of "any expenditure for lobbying which exceeds $10." Second, the Railsback bill does not require that entertainment expenditures be separately itemized as part of the total expenditures.

Reports: The Railsback bill also requires "lobbyists" to file comprehensive reports on a quarterly basis. Although somewhat less detail is mandated by this proposal than by the Stafford bill, virtually the same "core" report items are sought in both bills.

Availability of Records to the Public: The Railsback and Stafford bills have virtually identical provisions with respect to notices, records and reports which must be filed with the Commission.

In addition, the Railsback bill requires that records which must be maintained by officers and employees of the Executive Branch must be put in a case file or otherwise be made available to the public within two working days of receipt of communications related to the "policymaking process."

Administration: The Railsback bill also vests the duty to administer the law in the Federal Election Commission. Although the powers and duties of the Commission are not spelled out as specifically as in the Stafford proposal, the principal investigatory and rulemaking powers are found in both bills.

Advisory Opinions: The Federal Election Commission is given no specific authority to issue advisory opinions related to administration and interpretation of the lobbying laws in the Railsback proposal.

Effect on Internal Revenue Code: Identical to Stafford bill.

Enforcement: The Federal Election Commission would have primary civil and criminal enforcement responsibility. Criminal prosecution could be undertaken by the Attorney General or the Justice Department only with the advice and consent of the Commission.

Records of Executive Branch Employees: Each official or employee of the Executive Branch who is grade GS-15 or above, is in any executive level position, or is designated by any of the preceding individuals as being responsible for making or recommending decisions affecting the "policymaking process" must maintain detailed records of oral or written communications received directly or indirectly expressing an opinion or containing information with respect to such policy matters. The records shall contain at least the following information:

(1) the name and position of the official or employee who received the communication;

(2) the date upon which the communication was received;

(3) an identification, so far as possible, of the person from whom the communication was received and of the person on whose behalf such person was acting in making the communication;

(4) a brief summary of the subject matter or matters of the communication, including relevant docket numbers if known;

(5) in the case of communications through letters, documents, briefs, and other written material, copies of such material in its original form; and

(6) a brief description, when applicable, of any action taken by the official or employee in response to the communication.

Sanctions: Fines, imprisonment, or both may be imposed for violations of the bill's requirements.

Price Bill

This bill would substantially expand the coverage of present law, and the accompanying recordkeeping and reporting requirements. It does not, however, seek to extend coverage to as broad an area of activities or types of communications as are encompassed in the Stafford and Railsback bills.

Coverage - in general - extends to anyone who, for any compensation or promise of compensation, seeks to influence legislation by "direct communication," or solicits others to do so. The "principal purpose" test applicable under present law is eliminated. Covered persons are required to maintain specified records and file reports with the Comptroller General, who is given responsibility for administration, including issuance of regulations.

Within the scope of "direct communications" are not only those directed to Members of Congress, but also solicitations of such communications made to any committee or employee of Congress, or to a department or agency of the Federal Government.

An advance filing (designated as "Notice of Representation") would be required to be made only by a "Legislative Agent." Officers or employees are not legislative agents, and apparently only one acting in the capacity of an independent contractor would fall under this designation. This category is not limited to individuals, however, and it seems that there could be instances where a firm or association would be considered a legislative agent.

Covered persons: Those to whom recordkeeping, reporting, etc., responsibilities extend include:

(1) any legislative agent;

(2) anyone employing a legislative agent in any calendar half-year;

(3) any paid officer or employee who makes a covered communication to influence legislation on behalf of his employer on any six or more days in a calendar half-year;

(4) anyone soliciting others orally or in writing to influence legislation by direct communication, if (1) at least 1,000 persons are expected to be reached, or (2) the solicitation is made to at least twenty-five persons who, for their efforts to influence legislation by direct communication, are paid by the person who has made the solicitation.

(5) any person who publishes, distributes, or circulates a house organ, or a trade or "commercial journal," if the publication is not customarily distributed to the general public and contains matter soliciting the reader to influence legislation by direct communication.

Legislation: This is defined as "any bill, resolution, amendment, report, nomination, or other matter in or before Congress or proposed to be presented to, or introduced in, Congress." Presumably this would mean that a communication suggesting, for instance, that some particular remedial legislation is needed, would be covered.

Exemptions: Among exempt communications are:

(1) any communication by an individual acting solely on his own behalf;

(2) any communication by any person which relates only to the "existence, status, purpose, or effect of legislation;"

(3) communications to Members, committees, officers, or employees of Congress when specifically requested by them;

(4) communications to a department, agency, establishment, or instrumentality of the Federal Government by request or invitation;

(5) testimony or written statements to a Congressional Committee "in connection with any matter before such committee" -- personal appearance at a hearing or a statement accepted for the record;

(6) news, editorial, etc., items (including letters to the editor or advertising) by newspapers or other regularly published periodicals distributed to the general public; radio and television stations, book publishers; and

(7) communications to the Comptroller General or Congress (including committees, employees, etc.) on rules or regulations under the Act.

Recordkeeping and Reporting: The calendar half-year is set as the basis for reporting requirements. Reports are to be filed within 15 days after the close of the period.

Items covered by reports include total income received for covered activities; name and address and amount received from any person for a covered purpose; covered expenditures, with itemization of any expenditure of at least $50 in value, the identification of any covered persons employed.

A voluntary membership association is not required to identify individual members and amounts paid by them, unless the amount paid by any member "for making covered communications" exceeds 5 percent of the organization's total expenditures for such purposes. Authority is given the Comptroller General to waive any such identification upon finding that it "would not impede the purposes of the Act."

Provision is made for allocation of multipurpose receipts and expenditures, including dues to multipurpose associations, as between covered and non-covered purposes. The ratio of the association's covered expenditures to those not covered would be computed and applied to the total dues paid by each member. If this results in a figure of $100 or more, the amount must be reported and attributed to the Member as a payment for a covered purpose.

Administration: The Comptroller General is designated as Administrator. He is given authority to issue rules and regulations, prescribe forms, make investigations, receive required notices and reports, make public disclosures thereof, recommend enforcement proceedings, etc. Provision is also made for appointment of an executive staff director by the Comptroller.

In exercising this authority, the Comptroller General would not be subject to the Administrative Procedure Act (as a Legislative Branch officer, the Comptroller General is exempted from this Act). A procedure is provided whereby proposed regulations are to be printed in the Federal Register, with opportunity to file comments. No provision is made for public hearings. The regulations would become effective unless the responsible House or Senate Committee adopts a resolution of disapproval.

Enforcement: Primarily to be through civil actions, instituted by the Attorney General upon the request of the Comptroller General. Criminal penalties are also provided, however, for any failure by a legislative agent to file a required notice or report, or for any willful and knowing false statements by any covered person.

Teague Bill

Scope and Coverage: With one exception, hereafter noted, only "direct lobbying" is covered. There must be oral or written communication by a person to Congress, a Member, a committee, or an employee thereof, before one is covered by any provision of this bill (subject to exemptions as hereafter noted).

Exemptions: These are generally similar to those in the Price bill, except for eliminating items not covered by "direct" lobbying (such as communications to Federal agencies and news items). There are, however some other important differences. One adds as an exemption any communication by a person other than an individual, on his own behalf, to Members of Congress from the geographical area where his principal place of business is located.

This latter exemption is important. It is intended to provide an exemption for communications by a company or other organization to Members representing the location of the communicator's principal place of business.

Expenditures are not referred to, since no expenditure data is required under the reporting provisions.

"Exempt travel expense" is defined more strictly than in the Price bill, including no allowance for a per diem. This is directed at avoidance of disclosure requirements by holding payments within the prescribed per diem rate, wherever they might be treated as such, regardless of the degree of lobbying involved.

Registration: A person who is employed or retained specifically for the purpose of making covered communications to lobby, and makes at least one such communication, must register as a lobbyist within 10 days after the initial communication. Registration is with the Clerk of the House and Secretary of the Senate.

Reporting and Related Matters: Semi-annual reports (due 45 days after the close of the reporting period) must be filed by:

(1) any person who lobbies for another person for pay on all or part of at least six days in a calendar half-year;

(2) any paid officer or employee of any person who lobbies for that person with respect to the same item of legislation on all or part of six days in the half-year;

(3) any person who, through the use of funds contributed to him, lobbies on all or part of six days in a half-year.

Information required to be reported is in much less detail and more simplified form than as called for by the Price bill. Financial data is confined to certain income items; expenditures need not be reported.

A person required to register must supply his name and address, the name and address of each person by whom employed or retained specifically for the purpose of lobbying, and each area of legislative activity for which he is registering.

A person required to file semi-annual reports identifies himself, and any person by whom employed or retained to lobby, any person from whom he receives income of at least $250 to lobby, any contingent fee arrangement, and his total income in the six-month period to lobby.

A provision is made for allocating income as between that received for lobbying and that received for other purposes.

There is no requirement that voluntary membership associations with dues receipts covering general activities must attribute any specific receipts to any specified members.

Requirements for recordkeeping are conformity with generally accepted accounting principles -- tax records will suffice. No specific details are set forth.

Lobbying Solicitations in Media: The only provision in the bill dealing with other than "direct lobbying" relates to paid solicitations of persons to lobby in a direct manner, appearing in newspapers or magazines, or in a radio or TV broadcast. Identification of the person who paid must show on the published item, or be made at the time of the broadcast.

Enforcement, Administration, Sanctions: These provisions are largely similar to the Price bill, except that the administrative authority is vested jointly in the Clerk of the House and the Secretary of the Senate.

COMMENT

With the exception of the Teague bill, the various pending proposals reflect a similar aim, and while the extent of their impact varies, they all would impose a new and burdensome detail of record-keeping and reporting upon all affected persons.

Anyone who, in the course of his business or employment, communicates with anyone in Congress, or a Federal agency, or solicits others to do so, would have to keep records of all such communications, and most such persons would be required to register as lobbyists and file reports. Employers would have similar obligations.

Complexities of legal requirements, and the problems of compliance are made more perplexing by extending coverage, to varying degrees of so-called "indirect" lobbying, or even activities never heretofore considered "lobbying."

S.815 and H.R.15 (Stafford and Railsback bills) go far beyond the constitutional limits on accountability for "lobbying," as set by the Supreme Court, in seeking to cover actions other than "direct lobbying."

This is sought to be accomplished under the theory that the restrictions set by the Court, limiting accountability to "direct" lobbying, can be circumvented by the ingenious approach of generating a new definition of "lobbying."

This sweeping new definition would label as a lobbyist, subject to the requirements of the bill, including criminal penalties, anyone who makes "a communication, or the solicitation or employment of another to make a communication, with a Federal officer or employee in order to influence the policymaking process."

Assuming, arguendo, that any such far-reaching and vague concept could stand the test of constitutionality, there is no need or justification for the incredible burden of recordkeeping and reporting which this would impose upon a vast number of persons and organizations throughout our society. On the contrary, these requirements can only have a chilling effect on those who legitimately seek to exercise their constitutional rights of freedom of speech and petition.

Constitutional considerations aside, as a sheer practical matter, it is virtually impossible to contemplate how the untold thousands of persons who must communicate with Federal officials in the course of their professional duties, employment, business operations, or any other covered capacity, can be expected to determine in every instance whether each such communication is designed "to influence the policymaking process."

At the same time, such legislation will not -- and cannot -- deter individuals whose intent is to corrupt by offering bribes or otherwise violating existing law. Indeed, no proponent of these proposals has demonstrated that the present statutory prohibitions contained in the Criminal Code are inadequate to deter unlawful conduct. An individual intent upon commiting such criminal acts will most certainly ignore the requirements for recordkeeping and reporting contained in these bills.

The stated purpose of S.815, contained in §2(b), is that the unprecedented and burdensome recordkeeping and reporting requirements proposed are necessary in order that Members of Congress, the Executive Branch, and their respective staffs may "better evaluate" the efforts of those who advocate positions concerning public policy matters.

It is unlikely that Members of Congress or the Executive will hurry to the files of "lobbying" reports every time a "lobbyist" appears before or otherwise communicates with them. Rather, any responsible legislator or official would and could readily verify the credentials or the bona fides of anyone making representations to him as a spokesperson for any "lobby" or group which was unfamiliar to the official being "lobbied." Furthermore, this seems to assume that our legislators and officials, in the evaluation of public issues, are more concerned with who presents viewpoints than they are with weighing the merits of the facts and arguments advanced.

S.815 and H.R.15 provide that all voluntary membership organizations engaged in "lobbying" must report (1) the approximate number of members, (2) how decisions to engage in "lobbying" are made, and (3) the names of all members who pay dues in excess of $100 per year. H.R.44 has a similar disclosure provision. These provisions concerning the disclosure of membership lists, at the very least, raise serious constitutional issues in light of the past decisions of the U.S. Supreme Court and other Federal Courts.

Notwithstanding the probable unconstitutional nature of these specific disclosure requirements, listing of the membership of voluntary organizations in the manner required would create an inference that each named member endorsed each and every reported position of the organization. It also ignores the fact that some members may join and support the organizations specifically because of programs and purposes unrelated to any so-called "lobbying" of the Legislative or Executive Branches.

Thus, these bills would create a distorted view of the functions of voluntary organizations and the interests of their members. The fact that such organizations, like the Congress, operate on the basis of majority rule, would be lost upon those who review and publicize the registration forms mandated by the bills.

No legitimate and responsible organization will object to providing information on the procedures by which policy decisions constituting positions of the organization are reached. This is, indeed, a basic element in the evaluation of representations made on behalf of membership organizations. But such information can readily be obtained without superimposing any new mandatory requirements for reporting.

The Price bill would significantly expand the recordkeeping and reporting obligations of all individuals, firms and organizations having a legislative interest, but to a lesser extent than either the Stafford or the Railsback bills.

Although this bill directly affects those who "lobby" the Legislative Branch, it also extends to certain "lobbying" activities vis-a-vis the Executive Branch. Specifically, communications to Federal departments and agencies soliciting such entities to make a "direct address" to officers or employees of the Legislative Branch for the purpose of "influencing legislation" would trigger the notice, recordkeeping and reporting requirements.

This formulation of activities which are covered under the Price bill suffers from the infirmity of requiring both the "lobbyist" and, most certainly, those who enforce these burdensome requirements to assess the subjective intent of persons making such communications. Must the "lobbyist" clearly and specifically solicit the Executive Branch officer or employee to make a "direct communication?" What is the line between "solicitation", "suggestion", and the passing on of information which may be of interest to the Executive Branch officer or employee?

This problem of judging the subjective intent of the parties involved is inherent in many aspects of these various proposals to expand the coverage of lobbying, recordkeeping, representation, and reporting requirements. It is compounded when extended to communications with the Executive Branch, or others outside of the Congress. Indeed, any "grassroots" communication may raise these identical questions, exposing individuals, firms and organizations to potential criminal and civil liability.

The Supreme Court has sought to limit the applicability of any inquiry into the exercise of First Amendment rights to activities held to constitute "direct" lobbying. To seek to justify efforts to require accounting for so-called "indirect" lobbying on the grounds that someone is paid or is paying for a "solicitation" fails to recognize the kind of inquiry that inevitably will be directed toward all forms of communications activities.

There is no indication that any proponent of these bills has given any consideration to the cost to taxpayers of the manpower, supplies, and facilities necessary to carrying out all of the administrative and enforcement provisions.

It would seem highly important that there be a realistic evaluation of the economic impact of such legislation, in terms of what it will add to Federal spending and what it will cost as one more mass of paperwork for business, as well as all of the other areas covered.

While the Teague bill will require more persons to register and file reports as "Lobbyists" than under existing law, the relative simplicity of the registration and reporting requirements, plus the elimination of efforts to extend coverage into the complex area of "indirect" lobbying, reflect substantial improvement over the Stafford, Railsback and Price bills and a greatly lessened burden of compliance.

A variety of problems of interpretation and application of the existing law would be resolved, or at least more readily dealt with under specific regulatory guidelines, without introducing the new complexities and inevitable litigation arising out of provisions of the other bills, especially those dealing with the broad area of published materials, disclosure of individual organization member dues payments, and other details.

NATIONAL CHAMBER POSITION

The National Chamber is opposed to S.815, H.R.15, H.R.44, or similar bills as imposing unnecessary and harassing burdens on rights of speech and petition. No useful public service is provided by such measures. They will impede Members of Congress, committees, and their staffs, and government officials in the free flow of communications and information.

Even if the law required disclosure by everyone engaged in any form of efforts to influence legislation or governmental policy (and withstood challenges to constitutionality), the time lag in reporting makes the kind of information called for of dubious value in evaluating sources of pressures. Congress or government officials can readily get information wanted as to bona fides of lobbyists without the complexities and sanctions proposed by such bills.

Advocates of such "disclosure" legislation have not shown that the far-reaching impositions proposed are justified because of any gaps in existing law aimed at deterring or punishing criminal conduct or by any sound public policy considerations.

If any legislation is to be acted on, the Chamber would support the Teague Bill (H.R.1112) as the most reasonable in its provisions, being restricted to certain areas of "direct" lobbying and minimizing record-keeping and reporting.

Senate and House Committees to which bills analyzed in this report have been referred

Senate Government Operations Committee

Democrats (9)	*Republicans (5)*
Abraham A. Ribicoff, (Conn.) *Chairman*	Charles H. Percy, (Ill.)
John L. McClellan, (Ark.)	Jacob K. Javits, (N.Y.)
Henry M. Jackson, (Wash.)	William V. Roth, Jr. (Del.)
Edmund S. Muskie, (Maine)	Bill Brock, (Tenn.)
Lee Metcalf, (Mont.)	Lowell P. Weicker, Jr. (Conn.)
James B. Allen, (Ala.)	
Lawton Chiles, (Fla.)	
Sam Nunn, (Ga.)	
John Glenn, (Ohio)	

Staff Director, Richard A. Wegman

House Committee on Standards of Official Conduct

Democrats (6)	*Republicans (6)*
John J. Flynt, Jr., (Ga.) *Chairman*	Floyd Spence, (S.C.)
Melvin Price, (Ill.)	James H. Quillen, (Tenn.)
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F. Edward Hebert, (La.)	Albert H. Quie, (Minn.)
Thomas S. Foley, (Wash.)	Donald J. Mitchell, (N.Y.)
Charles E. Bennett, (Fla.)	Thad Cochran, (Miss.)

Staff Director, John M. Swanner

House Judiciary Committee

Democrats (25)	*Republicans (12)*
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Jack Brooks, (Tex.)	Robert McClory, (Ill.)
Robert W. Kastenmeier, (Wis.)	Thomas F. Railsback, (Ill.)
Don Edwards, (Calif.)	Charles E. Wiggins, (Calif.)
William L. Hungate, (Mo.)	Hamilton Fish, Jr., (N.Y.)
John Conyers, Jr., (Mich.)	M. Caldwell Butler, (Va.)
Joshua Eilberg, (Pa.)	William S. Cohen, (Me.)
Walter Flowers, (Ala.)	Carlos J. Moorhead, (Calif.)
James R. Mann, (S.C.)	John M. Ashbrook, (Ohio)
Paul S. Sarbanes, (Md.)	Henry J. Hyde, (Ill.)
John F. Seiberling, (Ohio)	Thomas N. Kindness, (Ohio)
George E. Danielson, (Calif.)	
Robert F. Drinan, (Mass.)	
Barbara Jordan, (Tex.)	
Ray Thornton, (Ark.)	
Elizabeth Holtzman, (N.Y.)	
Edward Mezvinsky, (Iowa)	
Herman Badillo, (N.Y.)	
Romano L. Mazzoli, (Ky.)	
Edward W. Pattison, (N.Y.)	
Christopher J. Dodd, (Conn.)	
William J. Hughes, (N.J.)	
Martin A. Russo, (Ill.)	

Staff Director, Garner J. Cline

Mr. TURNER. Would you consider the distribution of this book to the Members of the Congress as a lobbying activity?

Mr. SMITH. Probably so—depending on how it is construed.

Mr. TURNER. Should this be reported?

[No response.]

Mr. TURNER. Would you support a bill that requires this to be reported?

Mr. SMITH. To the extent that it is a communication to the Members of the Congress, I would not object to reporting the fact. I do not know how useful that would be since it has been distributed to the Members of Congress and they know where it came from. I do not think that it helps them very much to know exactly what it cost us to print it and mail it. But we would not encounter any great difficulty in determining that cost and reporting it if we had to.

However, there has been and will be a great deal of distribution of this to people outside of Congress within our membership and to many others.

Mr. TURNER. Do you consider this to be grass roots or indirect lobbying?

Mr. SMITH. To the extent that it is distributed to other than Members of Congress, that could fall in the area of indirect lobbying.

Senator METCALF. That brings up a real serious question when you talk about grass roots. Suppose we never address this publication to a single Member of Congress or to a single legislator, but you distribute it to thousands of people who are constituents of ours, who in turn—like the subscribers to human events. They send everything in every week when it comes out. So we would get dozens and dozens of these statements.

Isn't that just as much lobbying as if you mail it to the Members of Congress?

Mr. SMITH. Under a broad construction of the term lobbying, perhaps, but it is a question of categorization or interpretation. We were just making the distribution between direct lobbying and indirect lobbying where the communication goes to, others than Members of Congress. Direct lobbying, of course, is where you communicate directly to the Members of Congress.

Senator METCALF. But you are trying to influence legislation either way.

Mr. SMITH. Yes, sir.

Senator METCALF. The most effective influence in legislation is the so-called secondary lobbying, that is an indirect lobbying to people and say to write their Congressmen.

Mr. SMITH. I think many times the views expressed by constituents to their Congressmen will carry a great deal more weight than the views of some organization that they may consider to be a special interest organization.

Senator METCALF. I am not going to agree or disagree. It is a matter of this special legislation.

I used to be able to keep track of the lobbyists of the Liquor Goods Association by the post cards I got from bartenders, whether in Haver, Mont.—I used to get a lot of post cards from Haver. Then I may get post cards from Shelby and so forth. I could not keep track of them. We did not pay much attention to that sort of thing.

But on the other hand, well written letters from our constituents are very important.

But so are the kinds of statements that you present here very important. I think as a Member of Congress I could not get along without either of them. I do not want to put anything in the way of my constituents telling me about these things.

It seems to me that no matter whether you can take care of this or not—as a lawyer, you must feel as I feel that it is a violation to restrain you from circulating information pamphlets such as this—a violation of the first amendment.

Mr. SMITH. Absolutely.

As a matter of fact, as I construe the decision in the *Harriss* case, the Supreme Court said that under the existing regulation of the Lobbying Act, we may not be required to give any accounting for distribution of publications, except those sent to Members of the Congress.

Of course, as I said, I would have to construe this as an attempt to influence legislation. I think it would be so construed by anyone who is adjudicating that question.

I think it is much more important to look upon it as education and informational. I would hope it would be useful as an educational piece that will give persons who might have some interest in this subject a thorough exploration of the provisions of the bills. It will explain some of the ways in which those provisions would impact on a wide range of activities.

Very interesting to me have been the inquiries I have had from other organizations, some of whose positions were frequently and perhaps most often would be diametrically opposed to those of the chamber on other legislation, who apparently first became aware of the pendency of these hills and became very much concerned about them, because they got a copy of our publication.

Senator METCALF. I interrupted Mr. Turner. You can go ahead with your staff questions.

Mr. TURNER. Let us look at some of your lobbying techniques, such as computerized mailing lists—you do have computerized mailing lists in Washington. Is that correct?

Mr. SMITH. We have been undertaking to set them up, yes.

Mr. TURNER. You do make those available to the various chambers —or regional chambers throughout the country for their use?

Mr. SMITH. To my knowledge, no. This is solely for our use. As far as I know, we do not—in fact, we do not make our mailing lists available to anyone outside of our organization.

Mr. TURNER. Do you report expenses as they are incurred in developing computerized mailing lists?

Mr. SMITH. At the present time, no.

Mr. TURNER. Would you support any such reporting, or do you oppose it?

Mr. SMITH. I think I would have to say that I would not be in favor of that, because I think that is related to the area of indirect lobbying that I believe is protected, is constitutionally protected.

Mr. TURNER. In other words, what you are saying to the committee is that you are supporting the present Lobbying Act which will require registration, receipts and expenditures required by the present Lobbying Act? You do not see any need for strengthening it, improving it or otherwise?

Mr. SMITH. I made it clear in the beginning that we have long felt that there are quite a few things wrong with the present Lobbying Act. I submitted my statement with the comments on that point.

Senator METCALF. There is no question about that. I think most of the witnesses have pointed out the defects, the abuses, and the loopholes in the present act. It is a question of complete overhaul or amendment to the existing act.

Mr. TURNER. One reason that concern is being expressed here is that the staff looked up the information on file in the appropriate Senate and House offices and found that the lobbyists for the Chamber of Commerce reported $350 in total receipts, and $285 in total expenditures, for the fourth quarter of 1974.

Concern was expressed as to whether or not that was, indeed, the actual range of your receipts and expenditures. That seems to be a rather small figure.

Mr. SMITH. Well, that is based on the strict construction of direct lobbying activities. It would involve the individual who makes the report. It would be an allocation of his time that he conscientiously considers to have been devoted to direct lobbying, and immediately related expenses.

Mr. TURNER. Mr. Smith, are you saying that in the last quarter of 1974 that your registered lobbyists only spent $285, taking into consideration your lobbying activities against the Consumer Protection Act, surface mining and other bills?

Mr. SMITH. We are talking about the portion of their time which might have been involved in direct communication with Members of Congress. We are not saying that that is a reflection of the total expenditures that might have been made in any other manner in connection with the Consumer Protection Act or any other legislation.

Mr. TURNER. So then we really need an amendment to get an accurate coverage of your direct and indirect lobbying activities, if you are a registered lobbyist, that shows precisely what was spent?

Mr. SMITH. I think the law could be improved in that regard.

Mr. TURNER. Do you not agree that $285 is a low figure?

Mr. SMITH. Well, it may sound like a low figure, but if you are—if the figure does reflect only the amount of time which may have been spent in direct communication by the reporting individual with Members of Congress on that piece of legislation, it may not be a low figure.

There might be any organization—and I think this was brought out in the testimony or the remarks of the AFL–CIO representatives—any organization that has an interest in legislation will have a broad range of activities ranging from those which are strictly objective and purely informative to those which might get down to the most persuasive efforts that they could exert in personal communication with Members of Congress. But it is that personal communication with the Members of Congress that is covered under the present Lobbying Act.

Mr. TURNER. The staff also found out that the Chamber of Commerce of the United States was not registered as a lobbying organization.

Mr. SMITH. The Chamber registered about 1950.

Mr. TURNER. I am sorry. You said it registered in 1950. Then what happened after that?

Mr. SMITH. I might explain that registration.

One of the problems under the existing law is the principal purpose test which has led to many questions as to whether an organization such as the Chamber of Commerce with a very wide range of activities is actually covered by the law.

Shortly after the law was passed, we did not rely just on our own legal staff, of which I was assistant general counsel at the time, we had outside legal opinions to the effect that under reasonable construction of the act, the Chamber was not required to register.

In 1947, a special unit was set up in the Department of Justice by President Truman, headed by Irving R. Kauffman, as a special deputy assistant to the Attorney General to conduct an investigation of compliance with the Regulation of Lobbying Act.

In the course of that investigation, Mr. Kauffman called in a number of organizations, including the Chamber, the NAM, and various other associations.

I may interpolate that it was as a result of threat of grand jury action, that the investigation led to the institution of a case involving NAM in which the present act was held unconstitutional. It was later moated in the Supreme Court.

We had quite a quarrel over the legal interpretation of the act. There were differences of opinion. One of them was the point on which the Department of Justice was ruled against in the *Harriss* case. Incidentally, it was the key point at issue. We were threatened with being taken before the grand jury. We felt that we would much rather find some way of complying with the law rather than to get into a long legal entanglement. We agreed that we would formulate a method for a report. We did that. We did it in a form which the Department of Justice approved at the time.

We continued reporting until 1970 when the Clerk of the House refused to accept our reports unless they were on the form prescribed by the Clerk. That form prescribed by the Clerk of the House—I have a copy here which can be introduced, if you would like to see it.

Senator METCALF. Yes, please put it in the record.

[The form referred to is printed elsewhere in this hearing record; *see* p. 69.]

Mr. SMITH. This form down at the bottom says that it was issued June 4, 1958 by the Secretary of the Senate and the Clerk of the House of Representatives, superseding form issued January 1, 1951. Those 1958 revisions in this form were very minor.

I think it is important to note that date, form issued January 1, 1951.

This form was devised before the Supreme Court decision in the *Harriss* case. It calls for the reporting under oath of receipts and contributions, and expenditures in a wide range of areas where the Supreme Court has said reporting may not be required constitutionally. There are limitations on the present act that say you may not be required to report on these areas involving indirect lobbying.

We were, and I am still willing to report our direct lobbying expenditures in conformance with the law.

But I have great hesitancy, aside from the practical problems which are involved, outside of that area, one of which was illustrated by my reference to the Nation's Business article. I have great difficulty and great concern about trying to report for public relations

and advertising services, and printed—or duplicated rather—including distribution costs—in a situation where an error which might be construed as a false report would subject the person who submitted that report to prosecution for perjury. I think this is one of the great problems we have with the present law, the insistence of reporting on a basis that the Supreme Court has said is unconstitutional.

Mr. TURNER. Mr. Smith, I think there are two problems. There is the matter of reports and the kinds of information required to be made public. But there is another problem and that is the definition of who is covered. What is the standard—principal, or substantial, or otherwise the material purpose of your organization?

I think that the Supreme Court may have indicated that the principal purpose of the chamber of commerce was not lobbying.

I am wondering if you would like to comment on whether or not you see some purpose, and with what degree of purpose, the chamber of commerce as an organization has with respect to lobbying?

Mr. SMITH. There is no question that the chamber of commerce has an important interest in legislative issues. There can be no question about that. I think every Member of Congress knows that.

Mr. TURNER. I understand that. You would see no objection to registering it as a lobbyist, would you?

Mr. SMITH. As a matter of fact, under the Teague bill, which we have indicated we will support, we will have to register and file reports for a substantial number of persons who are not reporting now. There will be no question that we will have to file reports for the chamber. But we would have clear guidelines and we would have no difficulty in reporting it, and no objection at all in reporting under that bill.

Mr. TURNER. Thank you, Mr. Chairman.

Senator METCALF. Your statement does give us assistance in looking at the legislation for corrections. We all agree to that. We need to tighten up some of the provisions of the present Lobbying Act. There are some loopholes involved. I do not think any of us want to go back to the Supreme Court again. I see no reason why the AFL–CIO and the chamber of commerce should not lobby. I see no reason why they should not be registered as lobbyists.

I think there must be a defect in the law when you are able to honestly and legitimately report such a small expenditure as you did in the last quarter of last year.

We appreciate your appearance here. We especially appreciate the suggestions you have made for the amendment of the act. We hope that we can make the necessary corrections without doing violence to the Constitution.

Mr. SMITH. Thank you.

Senator METCALF. Thank you very much.

I understand that Congressman Railsback is here. Tom, we are delighted to have you.

TESTIMONY OF HON. TOM RAILSBACK, U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RAILSBACK. Mr. Chairman, I wonder if I might have permission to have my formal statement made a part of the record?

Senator METCALF. You have my permission. It will be entered at the end of your testimony.

Mr. RAILSBACK. I apologize for my creaky voice. I have had some problems with it.

Mr. Chairman, I think it is perfectly proper for an individual, a company, a labor union, an association, a cooperative or other organizations to contact a Member of Congress or the executive branch of Government to urge a certain course of action.

But in the case, where by reason of its resources, that entity is going to perhaps exert an inordinate influence, I think it is in the public interest and in the general welfare to require disclosure of such contacts.

There are many issues that effect the general public where the general public does not know what is going on. They have no paid Washington representative or representatives as the case may be. In addition, they are not schooled in how to influence legislation. I would guess that many have no understanding of the legislative process, and unfortunately this is particularly true of the poor and the disadvantaged.

There is no way that they can have an equal voice with the organization that has paid researchers, lawyers, writers, and lobbyists.

And yet, this is a representative Government. We are supposed to represent the people.

In my opinion, we will strengthen our democracy by requiring disclosure so that our people will have an idea what influences took place, what pressures we were under, and in my judgment, it will serve to make us more accountable as well as the lobbyists.

Finally, I recognize that concerns have been expressed about the paperwork and the recordkeeping. This subcommittee will have an opportunity to work its will on the pending proposals.

None of us want to impose an unworkable hardship on the lobbyists grassroot contacts. We have purposely omitted the so-called eight affected. In our bill, we have tried to define lobbyists so as to exclude grassroot contacts. We have purposely omitted the so-called eight contacts provision contained in the Stafford-Kennedy bill for that reason. We are interested in the professionals who are paid to influence legislation.

We are not trying to limit free speech at all. We are trying to do what 35 States have done by the end of the Second World War that is require disclosure and accountability.

In my judgment, if we are definitive and if we are specific, I am convinced that a comprehensive disclosure bill would certainly be upheld.

Thank you, Mr. Chairman.

I want to also commend my colleague and my friend from Illinois for the work and leadership that he has given.

Senator PERCY. Mr. Chairman, I would like to welcome Congressman Railsback. He introduced legislation in the House on this matter. I am very happy to follow his leadership in a number of things, but particularly in this area where he has been such a devotee. I think he is a pioneer who will bring about reform and change that is vital and is absolutely essential and necessary.

We very much appreciate your appearance here today, particularly after your tennis injury to your throat. We realize you are here under some personal discomfort. We appreciate it all the more.

Mr. RAILSBACK. Thank you.

Senator METCALF. A rather harrowing experience I gather.

I think it is important for you to emphasize the fact that your bill does not prevent the average constituent from talking about legislation to the Members of Congress. Just a few minutes ago you talked about the professional.

Mr. RAILSBACK. Exactly.

Senator METCALF. Before you came in, I expressed some concern about the Montana snowmobilers who came here and wanted to protest about a wilderness bill. Certainly they should come back and be able to talk with as many members as they could see, whether it be with the Interior Committee or any other committee.

For example, Mr. Robert Redford is touring the Senate right now in opposition to the configuration of Mr. Hathaway as a cabinet member—as Secretary of Interior. My office is the same as yours. Congressmen, Senators, Cabinet officers and maybe generals come in and the staff pays no attention, but there is a big flurry when Robert Redford comes in.

Mr. RAILSBACK. Or Racquel Welch.

Senator METCALF. I must say that I would more prefer being lobbied by Racquel Welch than Robert Redford.

Senator PERCY. Have you seen Robert Redford's wife?

Senator METCALF. She did not come up to lobby.

Senator PERCY. She is working on the consumer protection bill.

Senator METCALF. The whole point is that he should be allowed—he visited every single member of the Interior in protest of the confirmation of Governor Hathaway as Secretary of Interior. I do not think it is that different. He should not have to register as a lobbyist, but I think the Constitution does protect him.

I think that if we put obstacles in the way of people such as that we are getting into constitutional provisions in the 1st, the 4th, and the 14th amendment. I see no reason why we cannot make the professional lobbyist register and report in a lot of ways that they have not been required to, under the present law, which is either unenforceable or has failed to be enforced.

Mr. RAILSBACK. Mr. Chairman, can I respond to a few comments?

Senator METCALF. Yes.

Mr. RAILSBACK. I think that the present law is a farce, particularly if you look at the history of registration and also expenditures. Every time some incident happened like the Bobby Baker scandal or a Supreme Court test of the 1946 act—what happened, all of a sudden was that the number of registrations went up substantially as did the reported expenditures.

I think right now we do not have any kind of an effective act at all. Those who are critical have not seen fit to come in and assist us.

In my opinion we must distinguish between different kinds of controls. I meet with my local chamber of commerce, who are friends. I have a very high regard for the job that they do. Those people back home are not paid to lobby. They neither receive money nor do they expend money to lobby. But on some occasions, they receive either

position papers or newsletters from a Washington office that has researchers, writers, lobbyists, that tell them to contact their Congressman. It is the same with the National Rifle Association. I have many friends who are members of the so-called NRA. The Washington office mobilizes tremendously effective campaigns. For the life of me, I do not see what is wrong with having them report or register.

Senator METCALF. Just to give you an example, Senator Ribicoff's staff found out that the Chamber of Commerce reported for the last quarter of last year an expenditure of $285, which demonstrates—and I am not saying that they failed to report, I think they complied exactly with the law—that the law is a farce.

Mr. RAILSBACK. We have fair deficiencies: one, the principal purpose test; another is the direct contact test that resulted from the *Harriss* decision. In addition, we have no Executive disclosure at all and there is no enforcement.

I sat on the Judiciary Committee during Watergate—without a doubt the fact that the dairymen contributed, or offered to contribute some money to the Republican Party resulted in their having easy access to the White House. We do not want to be vindictive or presumptuous. But we certainly want disclosure. It is reasonable and rational.

Senator METCALF. Senator Percy?

Senator PERCY. Congressman Railsback, as you know, our bill calls for executive branch officials to record their contacts with lobbyists.

Mr. RAILSBACK. Right.

Senator PERCY. What is good for the goose is good for the gander. I feel that Senators and Congressmen should also keep such a recording. Would you be willing to do so in your own office?

Mr. RAILSBACK. Yes, I certainly would. I think it might hurt the chances of the bill, frankly, but I personally would be willing to support it. I think there are differences between Congressmen and the executive agencies. We are certainly more subject to being accountable every 2 years or 6 years. We are more subject to the press oversight. In other words, I think we are generally more visible. But I think we should consider having congressional logging.

Senator PERCY. I would think it would be unwise to impose a requirement of the executive branch alone.

With regard to the charge that has been made that our legislation really requires too much paperwork and too much regulation, the best way for us to see whether it does or does not impose an undue burden, taking into account the benefits that might flow from it is to try it on ourselves and see.

Why don't you over in the House, and I will do it in the Senate. We will act as if we were under the law now for a couple of weeks and record just to see how much of a burden or how much paperwork it does create.

Mr. RAILSBACK. Let me just add that the Consumer Product Safety Commission has self-imposed requirements of logging.

Senator PERCY. So does the White House have quite a system of recording and taping.

Mr. RAILSBACK. That is true.

I would like to believe that that agency has not found those requirements too burdensome. As a matter of fact, they think that the bene-

fits derived have outweighed the burdensome problem of having to log. I really do not see anything wrong with it.

Senator PERCY. Do you have a feeling that the benefits provided for in your legislation offset the paperwork required in the legislation?

Mr. RAILSBACK. Yes, I certainly do.

I would like to just add, perhaps your subcommittee in the case of, say, a union or a chamber of commerce that has a Washington office, that perhaps sends out a weekly newsletter or a weekly bulletin would like to facilitate recordkeeping requirements. I certainly do not think that we want to require that such organizations list or have to submit copies of every single letter that goes out. But they could certainly indicate that they have sent out a newsletter, give us the form of it, and tell us generally that it went to all of their affiliates. I do not think that is unreasonable.

Senator PERCY. According to the Kennedy bill, in section 3, on page 7, "In the course of lobbying during the quarterly filing period if he communicates orally on eight or more separate occasions with one or more Federal officers or employees" he is classified as a lobbyist. We do not have such a provision in our bill.

Now I attended a reception the other night for all educators here from Illinois. They had every legislator from Illnois and the surrounding States stop by. There must have been 20 to 25 Members of Congress at that reception. Each one of those people talked to at least eight of those people.

Do you feel it is wise to require that they be registered as lobbyists, because they made oral communications at a reception given for Congress for the purpose of talking about legislation? They were there and putting education high in priority. They were in a sense lobbying.

Should we be so strict as to——

Mr. RAILSBACK. I do not think so.

Senator PERCY [continuing]. Require that?

Mr. RAILSBACK. I am against the so-called eight contact provision for this reason. I think there are examples, and perhaps the one you have just cited is a good one, but there are others as well. I have read Senator Kennedy's testimony. I do not question the intent at all. I think it is very worthwhile in its intent.

But I think we want to differentiate between somebody who is receiving or spending money to influence, certainly not a person who is spending his own money either in the district or here to influence—who is not paid for it, or is not paying or spending money other than lodging or travel to do it. I think there is where you would have a chilling effect on the nonprofessional lobbyist there. He has every single right to petition his Government for redress or for whatever purposes.

Senator PERCY. Mr. Chairman, a personal note, the Adlai Stevenson and Percy offices each year have a baseball team and we compete. We have accused them and they have accused us of hiring people based on their proficiency in baseball rather than in researching legislation.

The distinguished Congressman of Illinois has just hired an outstanding tennis player, Stewart Jones, and put him on his staff. I anticipate we will get an office challenge in the next few days.

Mr. RAILSBACK. You have one. Last time you had a professional.

Senator METCALF. Thank you very much, Congressman. Thank you for coming. I know you have given a lot of consideration to this whole problem. We will have further discussions with you.

Mr. RAILSBACK. Thank you.

[The prepared statement of Hon. Tom Railsback follows:]

PREPARED STATEMENT OF HON. TOM RAILSBACK, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

NEED FOR LOBBY REFORM

Mr. Chairman, Members of the Committee, I very much appreciate the opportunity to appear before you this morning. In the aftermath of Watergate, I think we are all striving for more open government, and lobby reform should certainly be a major part of our efforts.

I'd particularly like to commend you, Mr. Chairman, and Senator Percy for your recognition of the need to improve the existing lobbying act, and I look forward to working with all of you in hammering out legislation that will restore public confidence in our system of government.

Let me just say at the outset that I firmly believe that seeking to influence the decisions of government officials is not inherently wrong or evil nor somehow injurious to the policy-making process. This is a right guaranteed by the Constitutional safeguards of free speech, assembly, and petition for the redress of grievances. Further, interest groups often provide information and technical assistance that is unavailable elsewhere.

However, I believe just as strongly that we must also do away with the secrecy that too often dominates lobbying activities and which undermines accountability and contributes to the loss of confidence in the conduct of our government. Unless the activities of all lobbyists are brought out into the open, the secrecy which protects the unsavory conduct of a few will condemn the reputation of all.

The failure of the present lobby law, the 1946 Regulation of Lobbying Act, has been well documented, most recently by the G.A.O. report submitted to this Committee. Drafted on the model of a 1936 proposal, the bill was but briefly debated before being passed as part of the Legislative Reorganization Act of 1946.

As the law is presently construed, large loopholes exist which allow many interests to avoid registering. Under the narrow definitions of the law as set forth by the Supreme Court, numerous organizations do not register by claiming lobbying is not their "principal purpose".

The 1946 act also does not cover lobbying activities unless the Member of Congress is contacted directly by the lobbyist. Contacts with members of a Congressional staff and much of the "grassroots" pressure are thus exempted.

In addition, the 1946 Regulation of Lobbying Act does not cover executive branch lobbying. And yet, as we are all aware, this type of lobbying does exist, and, as the milk fund and I.T.T. cases reveal, abuses can and do occur.

Finally, there is virtually no enforcement of the lobbying law. It does not require the Clerk of the House or the Secretary of the Senate, to whom reports are presently made, to investigate lobby registrations and financial reports for truthfulness; nor can they require individuals or groups to register as lobbyists.

The extent to which the law has failed is suggested by the fact that between 1913 (when Congress first extensively investigated abuses of a Washington lobby) and 1946, there were no fewer than 10 Congressional investigations of lobbying abuses. Since passage of the 1946 Act, we have had at least as many investigations of alleged improprieties. Most recently, the impeachment investigation of the House Judiciary Committee, on which I served, heard compelling evidence of improprieties in the policy-making process that might have been deterred had there been an effective lobby law.

Congress has recognized the need for a more effective lobbyist accountability law and over the years has moved—albeit slowly—toward rewriting the 1946 Act.

Fortunately, this year the intent of Congress to support a lobby disclosure bill is clear. A Common Cause survey has shown that 318 out of 343 responding Congressmen support such an effort. The House Republican Task Force on Reform has pointed out that the states are moving on lobby reform, and "so should Congress." H.R. 15, the bill Bob Kastenmeier and I introduced on the House side, now counts 145 co-sponsors; and similar bills, on both the Senate and House side, are gaining support.

I would ask this Committee, in your deliberations, to give serious consideration to S. 774, which is identical to my bill, and which has been sponsored by my good friend and Illinois colleague, Charles Percy, and the Chairman of this Committee.

I think it is important to take note of what our approach does not do. It does not regulate or restrict a lobbyist's activities. It does not prohibit or limit a lobbyist from meeting with a Member of Congress, an official of the Executive branch, or any staff member. It also does not prohibit one from making a political contribution. And it will not affect the average constituent who merely wishes to write or visit his representative.

The intent of H.R. 15 and S. 774 is simply to provide for lobby disclosure. The measures are based on the premise that those who seek to influence public policy should, themselves, be open to public scrutiny.

The Public Disclosure of Lobbying Act will remedy three major faults in present law.

First, the definitions of lobbyist and lobbying activities have been clarified and broadened, and persons defined as lobbyists will be required to register and make periodic reports such as they now may have to do under current law.

Second, the same registration and reporting requirements for those who lobby Congress will apply to those who lobby the Executive agencies. Additionally, we are requiring in our legislation the keeping of logs by certain government officials of meetings and other communications between the official and persons from outside the agency concerning policy matter before the agency. Hearings held recently in the Senate on a similar proposal provided compelling testimony that such a measure is feasible, neither costly nor burdensome, and provides for accounting of activities in an area that has heretofore been closed to public inspection.

Finally, the legislation places authority for administration and enforcement in the Federal Election Commission. It will not only compile the lobbying reports and publish them in the Federal Register, but the Commission will check for accuracy and completeness. Unfortunately, at the present time, the number of those filing fluctuates, often merely reflecting the change in atmosphere rather than the true number of lobbyists.

For example, Watergate was investigated by Congress from about early spring 1973 through the impeachment inquiry which ended in the summer of 1974. Available lobby registration figures disclose that for the period October 1972 through December 1973, 799 persons registered as lobbyists, as compared against 374 persons who registered as lobbyists during the time period December 1971 to October 1972. This was a more than two-fold increase in registrations!

In addition, the investigation into the activities of Bobby Baker was followed by a rise in lobby registrations. Baker was indicted in early 1966 after a fifteen month investigation. Between October 1966 and December 1967, lobby registrations totaled 449, as compared with an October 1965–October 1966 total of 32. In the period immediately following December 1967, registrations dropped again—almost by half!

Besides knowing the exact number of lobbyists trying to influence government policy, it is also important to obtain a clear picture of how much money is actually being spent.

However, the figures reported each year are often misleading. Some groups report only the fraction of their expenses incurred because of lobbying, while other groups report all of their legislative expenses. In addition, despite the fact that the number of lobbyists has increased at times, despite our inflationary economy, despite a nearly 300% increase in the costs of campaigns from 1952 to 1972 ($140 million to $400 million), the reported spending of lobbyists has not shown an appreciable, proportionate increase. It is clear that many are simply not reporting all their lobbying expenditures.

Mr. Chairman, Members of the Committee, in my judgment there is no effective lobbying law now. It is important that we enact legislation that will help to encourage the American people to have confidence in their government and their elected officials.

I believe the Public Disclosure of Lobbying Act of 1975 will do just that by opening up our system, and I urge you to act at once on this type of legislation.

Thank you for your consideration.

Senator METCALF. The committee will be in recess until tomorrow when our first witness will be our colleague Dick Clark, the Senator from Iowa.

[Whereupon, at 11:50 a.m., the committee recessed, to reconvene May 15, 1975.]

LOBBY REFORM LEGISLATION

THURSDAY, MAY 15, 1975

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met at 10:33 a.m., in room 3302, Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman) presiding.

Members present: Senators Ribicoff, Metcalf, Percy, and Chiles.

Staff members present: Richard Wegman, chief counsel and staff director; Paul Hoff, counsel; Marilyn Harris, chief clerk; and Elizabeth Preast, assistant chief clerk; also, E. Winslow Turner, chief counsel, Subcommittee on Reports, Accounting, and Management.

Chairman RIBICOFF. The committee will be in order.

Our first witness will be Mr. Harold R. Tyler, Deputy Attorney General.

TESTIMONY OF HAROLD R. TYLER, JR., DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, ACCOMPANIED BY MARY LAWTON, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, AND JOHN C. KEENEY, ACTING ASSISTANT ATTORNEY GENERAL

Mr. TYLER. My name is Harold Tyler, I am the Deputy Attorney General.

I wish to introduce Mr. John Keeney on my right, who is head of the Criminal Division. On my left is Mary Lawton, Deputy Assistant Attorney General in the Office of Legal Counsel.

This morning I am prepared either to read my statement or, if you would prefer, I could summarize it.

Chairman RIBICOFF. Your statement will go in the record as read.

Mr. TYLER. Very good.

Mr. Chairman, we are pleased to be here this morning because the Department of Justice supports an improved and strengthened lobbying law. With respect to S. 774 and S. 815, the two bills which the committee is considering in this connection, S. 815 is the kind of reform measure we would prefer. At the same time, we have strong concerns and apprehensions about certain provisions in each of the bills including those provisions which would deprive the Attorney General of enforcement authority, provisions extending the Lobbying Act's coverage to include executive branch activity, the provisions of S. 774 which require logging of outside contacts by persons of grade GS–15 or above in the executive branch, and certain aspects of both bills relating to tax exempt and charitable organizations.

As the committee knows, the existing Lobbying Act, which is now some 29 years old, has not been a very effective piece of machinery.

The Department's efforts over the years to enforce it have never met with any enthusiasm in the courts, and there have been rather few references and complaints.

In fact, on numerous occasions when the Department went to court under the 1946 act, on the criminal side, the indictments were summarily dismissed on demurrers by the defendants. This has been particularly true since 1954 when the Supreme Court rendered its decision in *United States* v. *Harriss*. In the *Harriss* case, the Court made a very noble effort to sustain the constitutionality of the 1946 act but in doing this, drew the act so narrowly that it has been virtually impossible to enforce as a lobbying statute since.

I am frank to say that our review of the departmental files indicates that particularly since 1954, there has been no success in enforcing any of the criminal sanctions of the 1946 act.

In brief, we think the *Harriss* case enabled many persons to escape the 1946 act's provisions, because their lobbying activities were not their principal activities, because their communications were with congressional staff as opposed to Members of Congress, or because they did not receive contributions for the primary purpose of influencing legislation.

Thus, it can be said somewhat conclusively, that the existing act covers only a small portion of lobbying activity as defined and known in actual practice.

In addition, the act presents a problem in terms of the ineffectiveness of its enforcement provisions. As the committee knows the required registration and reports must be filed with the Clerk of the House and the Secretary of the Senate. However, these officials have served merely as repositories of the records. Under the existing law, they have not been given any affirmative responsibility to investigate possible violations of the act or to refer complaints to the Department of Justice.

The Department of Justice, on the other hand, is authorized to enforce the act's criminal sanctions, but does not have any authority to monitor lobbying activities as a whole.

Consequently, we have been in a situation for some 29 years where neither the House nor the Senate, through its appropriate officials, has been able to monitor any violations of the act. Understandably therefore, they have not been able to make referrals of any consequence or of any number to the Department for possible prosecution.

Therefore, very few criminal prosecutions have been brought. Moreover, as I have already stated, the courts have looked very dimly upon the prosecutions which have been brought.

Of course, one problem in this regard is that the present law provides only for criminal sanctions. We think it wise that provisions for additional methods of enforcement, such as civil sanctions, are being considered.

As the committee certainly knows, a recent General Accounting Office report concluded that the unimpressive record of enforcing and administering the 1946 Lobbying Act has been due to several key factors: an unclear and ineffective virtual husk of a law, inadequate authority conferred on the Clerk of the House and Secretary of the Senate, lack of statutory guidelines as to the Department's responsibility in seeking out potential violators, and the fact that the

Department has no specific written criteria on whether a complaint should be investigated.

Both S. 774 and S. 815 attempt to remedy these problem areas, and in doing so they expand the coverage of the act in many ways which the Department of Justice would support. However, there are certain provisions of both bills about which we are very concerned.

For example, we are gravely concerned with the provisions in the bills which appear to divest the Attorney General of civil and criminal enforcement powers. This is a most important point which I would like to emphasize and develop later this morning.

We are also concerned that these bills seem to extend the application of the Lobbying Act to executive branch policymaking. We think this is wrong, except perhaps to the extent of applying the act where someone approaches executive branch officials and employees for the specific purpose of influencing the legislative process.

We are further concerned because certain provisions appear to require burdensome recordkeeping by executive officers and employees.

Finally we are concerned about certain provisions in the bills which seem to preclude the Internal Revenue Service from using an organization's compliance with the lobbying act as some evidence that it had engaged in lobbying activity forbidden to certain tax-exempt organizations.

In view of your time schedule, Mr. Chairman, though I am prepared to develop those concerns——

Chairman RIBICOFF. I think we could develop them with questions and answers.

Mr. TYLER. All right. Of course, as you said, we can put this statement in the record.

Chairman RIBICOFF. The entire statement will go in the record as having been read at the end of your testimony.

Mr. Tyler, a recent report from GAO prepared for me on lobbying has said, "The Department of Justice does not monitor the registration of the disclosure requirement under the act"—which takes away the effectiveness of compliance with the act.

The GAO report issued to this committee also stated that you do not consider yourselves responsible, and I quote, "for actively seeking potential violators."

Is the GAO correct in this conclusion?

Mr. TYLER. Well, in certain aspects I think they are correct. For example, we do not believe under the existing law that we have the power to monitor. As I have already pointed out, I think this is one problem.

Moreover, it is perfectly clear that we have had few referrals from the Clerk of the House and the Secretary of the Senate. As a result, most of our investigations over the years, which frankly have been few in number, really have occurred because of individual Members of the Congress and their staffs. Because of the way the courts have construed the statute, many of the investigations have resulted in no prosecutions.

Chairman RIBICOFF. In other words, you do not proceed actively and just wait for a complaint?

Mr. TYLER. We did not even get information over the years that would have permitted us, as I see it, to have been exceedingly active.

But certainly we did not go out hunting for them. We do not think under the statute, that we have the power or responsibility to do an overall monitoring job.

Chairman RIBICOFF. Page 6 of your prepared statement states that both S. 774 and S. 815 expand the coverage of the act in ways which the Department generally supports.

Am I correct in thinking that this means you endorse efforts to write a bill that covers indirect or grassroots lobbying, such as the mail campaign, which encourages the public to write to their Congressmen?

Mr. TYLER. No, I do not think that we would endorse such efforts because, to begin with, we would have first amendment problems.

In addition, I do not believe——

Senator METCALF. Wait a minute. Not only the 1st amendment, but also the 4th and the 14th amendments.

Mr. TYLER. It may very well do that, sir.

Chairman RIBICOFF. So you feel we have some grave constitutional problems involved here?

Mr. TYLER. I do, sir.

This is not an enviable task for a committee of the Congress. It is difficult to write legislation in this area. But we think that the measures before you are a good start.

I might say parenthetically, Mr. Chairman, we would like to submit two appendices of technical points and suggestions to supplement this prepared statement.

Chairman RIBICOFF. We would appreciate it, because I think we are concerned. We know that the lobbying law should be overhauled but we want to make sure that we do protect the constitutional guarantees of people who petition the Congressmen to make their viewpoints known. We do not want to impair anyone's constitutional rights. We would appreciate your technical analysis, but also your constitutional appraisals of these bills. They are very important to the members of the committee.[1]

Mr. TYLER. I think it is fair to say, Mr. Chairman, that within the next 2 days we can get this material to the committee. Of course, if you wish anything further in this regard, you will have to let us know.

Chairman RIBICOFF. I would appreciate that.

Would you support efforts to cover lobbyists who spend their own money and lobbyists who do not register because lobbying is not their principal activity?

Mr. TYLER. Well, I think that I would ask Ms. Lawton to answer that, because she and Mr. Keeney have followed this over the years while I have not.

But before they speak, I would suggest, Mr. Chairman, that the approach taken by S. 815, seems to be very good. Of course, this is a very general answer.

Chairman RIBICOFF. We solicit your appraisals.

Ms. LAWTON. Well, I think we definitely support efforts to cover persons who engage in lobbying on their own, at least when it becomes a regular matter. Of course, S. 815 does this. It sets a quantitative limit on when a lobbyist is covered.

[1] See p. 357.

This is very important, because of the *Harriss* case. S. 815 fills the loophole that was created in the *Harriss* interpretation in this regard.

Similarly, the coverage of those principal activities is not lobbying. It is important again provided that there is some quantitative cutoff. So that the very occasional efforts to influence legislation by a private citizen or an organization would not be covered.

Chairman RIBICOFF. In other words, you would feel the same way if they lobbied, without receiving their funds specifically for lobbying; such as when the actual lobbying comes from a labor union or the National Association of Manufacturers or any other organization?

Ms. LAWTON. If done on a regular basis.

Chairman RIBICOFF. If done on a regular basis?

Ms. LAWTON. Yes.

Chairman RIBICOFF. I would gather that you feel the present law is unenforceable, no good whatsoever? That it is meaningless.

Mr. TYLER. Substantially so. We have had almost no success enforcing the 1946 act.

For example, you may recall that last year former Attorney General Saxbe initiated criminal actions under the statutes. However, a declaratory judgment suit was brought in the district court by the defendants to nip that activity by the Department. The court granted the defendants a declaratory judgment, because of the narrow construction given to the existing law.

Chairman RIBICOFF. In your statement, you object to giving the responsibility to the Federal Elections Commission. Personally I object to that, too. I do not think it belongs there.

But where do you think the enforcement ought to go?

Mr. TYLER. Well, I would——

Chairman RIBICOFF. Where should the responsibility be lodged?

Mr. TYLER. Well, we think that the litigating enforcement and the enforcement responsibility should be retained in the Department——

Chairman RIBICOFF. In the Department of Justice?

Mr. TYLER. Yes, sir.

Chairman RIBICOFF. In other words, you do not want to get rid of it?

Mr. TYLER. No. We want to retain the responsibility and we are happy to see that the committee has in mind broadening the arsenal of remedies available to us. We want this responsibility as part of our general litigating authority. We think this is where it properly belongs and in no way want to duck it.

Chairman RIBICOFF. In the memorandum you are going to give us, you are going to advise us what should be in the law to let you do your job?

Mr. TYLER. Correct, sir.

Chairman RIBICOFF. I am delighted. I would rather have it there than any place else.

My feeling had been that you wanted no part of this.

Mr. TYLER. No.

Chairman RIBICOFF. I am glad to know that I was wrong.

Mr. TYLER. Mr. Chairman, we feel that we want very much to continue to exercise this enforcement responsibility. We want a better law. We think that is what you and the committee are working for.

Chairman RIBICOFF. On this question of grassroots lobbying to effect the constitutional rights of our people to make it possible for people to petition their Congressmen and Senators, what are some of your ideas of how we should balance that out? Do you think we can balance out and separate the constitutional guarantees of the right of people to speak out and to petition their Members of Congress, and still make sure that those who are engaged in lobbying are covered? Do you feel that can be arranged in this legislation?

Mr. TYLER. Well, very briefly, we think that you are off to a good start by the manner in which you define "lobbying" in S. 815.

As Ms. Lawton has already pointed out, this is one area of improvement we support. I think we can go further and say there are other definitions as well which represent vast improvements on the present system, and will be helpful in protecting the so-called grassroot petitions and/or individuals who are seeking simply to communicate with the legislators in matters of importance.

Senator METCALF. Mr. Chairman?

Chairman RIBICOFF. Yes.

Senator METCALF. I am concerned about this definition of lobbyist. A person who receives an income of $250 for lobbying for a substantial purpose, or in the course of the lobbying he communicated orally on eight or more occasions with one or more Federal employees.

Believe me, Mr. Chairman, I am concerned that this may be a violation of the first amendment. People come to Congress, they meet four of us, we have a very small delegation, then they go around and talk to some of our staff people. They are lobbying. They would have to register as lobbyists. I do not think that people should have to do that.

This definition is most restrictive. It would prohibit a whole lot of your, and my, constituents from coming to Congress and talking to us about their problems.

Chairman RIBICOFF. I agree with the Senator.

During the opening of the hearings, I pointed out to Mr. Gardner that in many instances people come from out of State. They may be organized groups who have a State problem and meet with the entire delegation.

As a senior member of our delegation from Connecticut, I usually get them together in my office, along with Senator Weicker and six Members of Congress. They should have a right to do that on any problem without in anyway being considered a lobbyist.

I think these are the things we can straighten out when we start writing the bill.

But these are suggestions that we really solicit from you, as well as from others. This is a sticky problem. We want to make sure we get a good law that will not restrict the rights of people to talk with their Representatives.

Mr. TYLER. Mr. Chairman, I share your concerns because it is not easy. Such definitions, of course, a matter of policy for the committee and Senate. But the Department of Justice will propose some ideas on this question in what I previously referred to as appendices to my prepared statement.

Chairman RIBICOFF. Your statement suggests that the bills should only cover lobbying before executive agencies when the lobbying involves proposed legislation. Yet some of the most important de-

cisions that are made are really made before regulatory agencies. In many ways, what the regulatory agencies do are much more important than what Congress does.

Would you exclude appearances or contacts with members of regulatory agencies? I think this is a field that certainly concerns Senator Metcalf who has followed this as much as anybody in Congress. Why would you exclude the contacts of lobbying of regulatory agencies?

Mr. TYLER. I do not really think we would. What we were attempting to focus on were some of the existing provisions from our own experience in the Department. Perhaps we were a little bit parochial about it.

Chairman RIBICOFF. It is not only that. Many basic decisions made by the Secretary of Agriculture, the Secretary of Commerce, the Secretary of HEW, the Secretary of Interior, and the Secretary of the Treasury are important, not only for an individual company, but also for the entire Nation.

I do not see how you can really exclude the entire executive branch from being subject to action by this committee and the Congress.

Mr. TYLER. On page 7 of my prepared statement, we point out that one of the difficulties—and you have hinted at this yourself, Mr. Chairman—is that the character and activities of administrative agencies and departments vary greatly. This is one of the heavy burdens in drafting here.

But I certainly agree with you. I can see how a regulatory agency might be much more important than, say, a given committee of Congress or a department in some instances. This is an extremely difficult question, and we would certainly not argue here that you should not be concerned about it.

What we are trying to suggest that we in the Department of Justice, would be very concerned, for example, if the act went too far and prohibited internal discussion and policymaking on matters of importance. We do not want to put you in a position where we inhibit men and women in the Department from conflict and discussion. Of course, you would not want to have us do that either, I am sure.

We were focusing more on this aspect in my prepared remarks here this morning.

On the other hand, I think that we would certainly share the committee's concern of trying to come up with some language that would exclude or prohibit ex parte communications with persons in an executive department, particularly if they were designed to get at pending legislation. This is something we believe you are also concerned with, and we think your concern is correct.

Chairman RIBICOFF. I would hope that you would give us a recommendation or a definition to make sure we exclude the individual constituent or the constituents that come to a delegation with a problem that affects that person or group. We do not want to exclude that individual.

I disagree with some of the proponents of the bill who say there is nothing to it. All the lobbyist has to do is recognize that he is a lobbyist and file a registration statement to that effect. This would certainly deter many people from coming to their Congressmen and Senators with problems.

All of us, on a day-to-day basis, meet people with deep concerns about public and private matters. They have a right to meet us. That is the only way they could get their ideas and their problems attended to with the bureaucracy that we have.

I would hope that in your suggestions you pay a lot of attention to this. Come up with a definition that does not impinge upon the freedom and the ability of people to really make their positions known.

Mr. TYLER. That would be fine. I would propose we go ahead and send over what we already have, but we will not assume that this is the end of it. We will continue along the lines you suggest.

Chairman RIBICOFF. This is very encouraging to me, because there has been a gap as to where we should put the enforcement in the administration. If I felt that there was some enthusiasm, as I find today, in the Justice Department for assuming this responsibility, it would be most encouraging to me.

Mr. TYLER. Perhaps Mr. Keeney, who has been involved in this area over the years would be a better witness on this question than I am. But I believe it is completely accurate to say that we would like to participate in writing a better law and do a real job in this area along the lines to be decided by the Congress.

Chairman RIBICOFF. Is Mr. Keeney the man who should be liaison with the Justice Department and the committee to work out some of these problems? Or would Ms. Lawton be the liaison?

Mr. TYLER. You could liaise, if I may put it that way, with both of them.

Chairman RIBICOFF. All right.

Mr. TYLER. The Criminal Division, which Mr. Keeney heads, includes the Fraud Section which would have the responsibility for this kind of enforcement.

Moreover, Mr. Keeney has knowledge of the problems of the enforcement of the 1946 act.

Chairman RIBICOFF. What do you think of the idea of requiring any official to keep a log of who he sees or who he talks to? How do you react to that?

Mr. TYLER. We had some discussions in the Department about this problem.

You may know that when Mr. Richardson was Attorney General, he issued regulations on ex parte communication, and Mr. Levi has provided a copy of these to Senator Muskie's committee which is also looking into this matter.

I think there is some efficacy in making the point that there should not be ex parte communications from other parts of the Government.

On the other hand, Mr. Chairman, it seems to me—quite frankly—a little unrealistic to assume that in the first place someone is going to remember everything he hears during the day or at some party at night around the city; second, if it is something really horrible, he probably is not going to make a note of it in spite of all the regulations in the world.

I think, though, the first point is important. I do think the existence of some rule, if it is well publicized, tends to discourage improper ex parte solicitations upon a department or agency.

Chairman RIBICOFF. If it cannot work, how can you have a rule? And if it is observed in the breach, what does it mean?

Mr. TYLER. No, I think even if it is observed in the breach by a poor beleaguered person who is supposed to make the note in the department, I still think that an outsider might think twice about making an improper ex parte communication if he knew there was some rule requiring the fellow on the other end of his conversation to make a note for the file.

Chairman RIBICOFF. I do not know. When people want to talk to me, I would hate to have the responsibility of being required to keep a list or to carry a notebook with me to jot down names all the time. I do not want to make this ridiculous.

Mr. TYLER. I agree.

Chairman RIBICOFF. I am deeply concerned. You can make this so ridiculous that it becomes laughable.

Mr. TYLER. That is a very important point.

In the 4 weeks that I have been Deputy Attorney General, Mr. Chairman, I have tried to make a note of everything I heard during the day. I have given up in despair because I know I cannot remember even at the end of the day. You are right.

The trouble is that one is tempted to think that perhaps something can be written in the law which is not silly, and yet would make the point—in a fair way—that there should not be inappropriate solicitation or contact in an ex parte manner with government officials, whether they be in the legislature or the executive branch. Perhaps it is unworkable. I do not know. I think it is worth thinking about.

Chairman RIBICOFF. Senator Metcalf.

Senator METCALF. Well, I have enjoyed your colloquy, Mr. Chairman. I have the same misgivings as the chairman does about the constitutionality of the various proposals here.

I want to talk to you mainly about enforcement. I wonder if we should not give the Department of Justice enforcement over criminal matters here and provide the commission with authority to handle the enforcement of the other noncriminal procedures?

Mr. TYLER. As you can perceive, Senator Metcalf, we are opposed to that approach.

Indeed, I must say that one of the things that discouraged me as a new returnee to the Department is how seriously over the years the civil and criminal enforcement responsibilities, which I always thought belonged to the Department, have been dispersed elsewhere.

But no less important, and within the strict confines of what we are discussing this morning, we believe it would be unwise from Congress point of view for either civil or criminal enforcement responsibility to be anywhere but in the Department. We think the Government should speak with one voice and it can speak more efficiently if we have a strong bill, which I know you are working toward.

We think, in particular, that retention of enforcement authority by the Department of Justice would avoid a proliferation of burdens upon the Commission, which is already, as I understand it, burdened by numerous other matters. So for this additional practical reason, we believe that it would be unwise to divide the enforcement responsibilities between the Commission and the Department.

As I told the chairman, we would like to get into the fray on both sides, civil and criminal.

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Senator METCALF. Of course, as you know, the regulatory agencies have all sorts of civil enforcement authority.

Mr. TYLER. That is true.

Senator METCALF. To my mind that is good. They are the arms of the Congress; they are the arms of the Congress and we use them to control the civil side. But for the criminal enforcement, we look to the Department of Justice. Why should we not extend this for this bill?

Mr. TYLER. Very simply, we do not regard it as an extension. We think that under the time-honored system and precedents of this country it is not only appropriate but more efficient to have the Department of Justice represent the Government both civilly and criminally under such statutes as this one.

We think that if the Department has alternatives, we can exact compliance with the law better than through criminal enforcement alone. One of the problems that we point out here—or we have tried to point out—is that in the 1946 statute there were only criminal sanctions. We think that in a difficult area like this, it is better and fairer to everybody concerned to have a select, sophisticated range of enforcement tools which are not simply criminal in nature.

Finally, we think that one agency, or one department, ought to decide—under the statute as enacted by Congress—whether enforcement is to be civil or criminal in the particular case. Frankly, I think that is excruciatingly important in order to do a good job.

To put that another way, Senator, if we had one agency responsible for civil enforcement, and another for criminal enforcement, I am afraid as a lawyer—I would have to say that it would only invite unnecessary internecine bureaucratic infighting.

Senator METCALF. Mr. Chairman, I only sought to elicit an opinion of the witness. I am not going to debate this question.

Chairman RIBICOFF. Senator Percy.

Senator PERCY. Thank you very much, Mr. Chairman. I am sorry I had another hearing to go to which prevented me from coming down earlier.

I have gone over part of your testimony. We appreciate very much indeed your offer to send specific suggestions to the committee on ways to amend or to improve the existing law.

You have mentioned some of the failings of the existing law. I assume that you will be addressing these failings in the suggestions that you will send to us.

You make a sharp distinction between the legislative process and executive branch action. Basically, you oppose extending the act to the executive branch.

Yet we use tremendously important decisions being made by the executive branch involving who gets what airlines routes, or what freight shipping rates should be. On the floor of the Senate today, we have a Consumer Protection Agency bill which has been filibustered on the floor of the Senate for a number of years.

Our main concern is not beating the filibuster, but it is overriding the Presidential veto. We know that lobbying has been carried on with the President of the United States, with the Director of ONB, with the White House staff, for the specific purpose of influencing that legislation—to get him to come out and oppose it and to fight that legislation in its present form. What difference is it then? The

President sits there with the power and two-thirds vote of the Congress. If it is all right to say you ought to have lobbying legislation affect legislators, what is wrong with having it affect the executive branch when it possesses the kind of power that can stop legislation. They are lobbying against the passage of legislation, which I think an overwhelming number of the Congress feels is in the best interest of the consumer and the American people.

Senator METCALF. Yes.

Senator PERCY. I say what is good for the goose is good for the gander. Why should we draw a distinction on lobbying activities only as it affects Members of Congress?

Mr. TYLER. I do not think that we mean to take the sharp position that nothing should be done which would affect the agencies or the executive department.

One of our troubles is that because of the infinite variety of situations it is very hard to perceive just how to go here and how to draw the line.

As you may have noticed on page 7 of our prepared remarks we admit this. It is difficult.

On the other hand, I do not think that this committee means to go so far as to say that you want to put rules inhibiting any kind of contact with the executive branch and denominate or define that as some kind of lobbying activity.

To take a very small example, in my own office, people call me and make suggestions about judicial appointments. Well, these are generally very respectable people and very respectable suggestions.

Senator PERCY. I think most of the lobbyists I work with are respectable people. They make pretty good suggestions.

Mr. TYLER. I think there are a lot of facets in this.

I do not think this committee or the Congress wants to inhibit or restrict such acts. We would all be tied up in knots. To put it somewhat differently, as I understood the chairman to say, if we had some kind of silly provisions which provided that every time you had a call or a contact you had to make a note for the file, why we all would be bogged down.

Of course, Senator Percy, this is not to diminish your point. I do not think we are here today to say, "Look, any legislation of lobbying should only be applied to the legislative branch." We are not saying this, but we are noting that one must be cautious in extending such regulation.

I think we summarized it as best we could on page 7. As we frankly admit there, it is difficult to see the lines here—we only dimly see them.

I wish I could be more helpful, but what we are really trying to say is that if you want to proceed with any executive or agency regulation of lobbying, it has to be perceived as a very difficult and a varied situation which demands a great deal of study to make sure that nothing inappropriate or foolish results. I only hope that we can help you on this in our appendices.

Senator PERCY. On page 7 you indicate or recommend that any lobbying legislation which would impose registration and reporting requirements on the executive branch be confined in its scope to contacts intended to enlist the assistance of executive branch officers

and employees in connection with a pending or proposed legislative program, or in other ways to intercede in the actual legislation process.

Mr. TYLER. Right.

Senator PERCY. For the Consumer Protection Agency bill which is being considered by the Congress, would you support the concept that if there is a law passed involving registration or reporting on activites, that would cover contact made by lobbyists, however we define them, with members of the executive branch to directly influence the course of that legislation?

Mr. TYLER. Well, I must say that I am a little bit confused with that.

Senator PERCY. If some executive of a trade association called on the Director of OMB, or on some officer of OMB, to influence him as to the position he was to take on a piece of legislation, would you support the concept of having that activity, or that contact, registered as a lobbyist activity?

Mr. TYLER. Well, I do not really know how to state this in any better way than we have said it at the bottom of page 7.

In other words, the answer to your question would be yes, within the articulation that we attempted to set forth therein.

Senator METCALF. Will the Senator yield?

Senator PERCY. Yes.

Senator METCALF. Since you are testifying here, Mr. Tyler, on behalf of the Department of Justice, how about the administrative lobbying to change the course of litigation?

Mr. TYLER. Senator Metcalf, I am frank to say that I do not understand what you mean.

Senator METCALF. Anyone that has lived through the Watergate investigation knows exactly what I am talking about. That is, that there are people who lobby to change or to alter the decisions made by the Department of Justice.

Mr. TYLER. Oh, I see. Yes. Right.

Senator METCALF. Okay.

Mr. TYLER. That is what I mean by—in my colloguy with the chairman and you earlier—by ex parte solicitations of, let us say, the Department of Justice to interfere with an investigation or litigation.

Though I quite agree with you, again there is an enormous definitional difficulty. For example, the Department deals with witnesses. It deals with informants who might call up unsolicited and say that they have information. I suppose that could be deemed an attempt to influence an investigation. Yet we cannot say that we can't be informed by citizens who have all of this information to give us.

The problem, as we try to point out on page 7, is so enormously complicated that it is almost impossible to perceive the myriad difficulties.

Now that I understand your point, of course, we would agree. You should not be calling up somebody in some other office in Washington—one of Mr. Keeney's lawyers, for example, and saying—"I think you should not pursue this investigation against so and so." That, of course should not be done.

Yet, how do you write a definition to take care of that obvious problem, when at the same time, you want to make sure that you are

not discouraging somebody who calls up and says, "Look, we have information that might bear on your investigation in the case of such and such." It is a very difficult problem.

Senator METCALF. Thank you very much.

Senator PERCY. Mr. Tyler, we do provide for contacts with Members of Congress, but taking into account how thinly we are spread, the tremendous influence that the members of the staff of Senators and Congressmen have on the Senators and Congressmen is not to be underestimated. I think I have 19 committees and subcommittees. I depend on staff a great deal. I know that they are lobbied.

Some of the lobbyists are the best people to go to on both sides of the issue to get research, help or assistance, which is perfectly appropriate. I do not know how we exist without them.

All we want to do is to be certain that it is not done under the table, that it is done out in the sunshine or out in the open.

A good lobbyist is proud of his work. The National Education Association would be happy—they long to have it known what they are doing on behalf of education. They are one of the best lobbyists down here. They are fine lobbyists. NAM, AFL-CIO, and UAW are awfully good.

But when they do contact members of our staff, should that not be considered a lobbying activity as well as direct contact with Members of Congress?

Mr. TYLER. I think that this point raises one of the weaknesses of the old existing 1946 statute. The courts construed it so narrowly as to make it uncertain in the context of this very point you are making.

To put it affirmatively, I think that lobbying should be defined to include contacts with staff, because that is very important.

Senator PERCY. Very good. I have just two other questions.

The first one concerns the once removed question. How about an organization whose whole activity is not to make direct contact with Members of Congress, or the executive branch, or the staff, but is to urge others to make contact with their Senators and Congressmen? Are they engaged—or should they be defined as engaged in lobbying activities?

Let's just take the case of Common Cause, which writes to their whole membership and says you get out and contact the Senators and Congressmen.

A chairman of the board of a company who in his annual report urges all of the stockholders of the company to contact their Congressmen and Senators, should he be considered lobbying in the terms of our definition?

Mr. TYLER. We think that would not be included. Moreover, we believe that in S. 815 you have been very careful in making sure that this sort of thing is excluded. That is the way we read the definition as it exists now in S. 815.

Chairman RIBICOFF. Will the Senator yield?

Senator PERCY. Yes.

Chairman RIBICOFF. Whatever is in the bill can be changed. We are asking you for suggestions along that line.

I read a couple of weeks ago in Jack Anderson's column about the chamber of commerce having a computer system on each one of us, every Senator and every Congressman. When they start a campaign

on a piece of legislation they match up that Senator or Congressman with their membership back in their home town or home State and they will zero in on Senator Metcalf, or Senator Chiles, or Senator Percy, or Senator Ribicoff. They push a button and back comes the mail.

Do you think that should be included or not included in the lobbying bill?

Senator PERCY. A lot of times they even compute out or print out letters which are all identical.

Chairman RIBICOFF. They should have a right to do it. But should Members of Congress and the public know that this type of campaign is not a spontaneous campaign, but an organized pressure campaign?

Mr. TYLER. Well, it seems to me not so much a question of law as one of policy. I would assume that probably the answer to your question is yes, though I do not profess to be an expert about this. The public should know about it.

If you are asking me if there is anything in the present bills, for example, or if there is a definition that answers the question of whether this kind of activity should be covered, I am frank to say I do not know the answer. I think it is mainly a judgment which neither I personally, nor the Department of Justice, is qualified or prepared to make.

Perhaps in the present definition of lobbying, this would be included. But I am not even sure that I am prepared to argue here today that such activity should be strictly considered lobbying.

Chairman RIBICOFF. I understand. In other words, you feel that it is up to us to make policies and not you.

Mr. TYLER. That is right.

Chairman RIBICOFF. I understand that.

Senator METCALF. Would the Senator yield?

Senator PERCY. I have just one more question and then I want to get back upstairs, if that would be all right with you?

Senator METCALF. Fine.

Senator PERCY. I have one question that does not pertain to this legislation. One of the greatest responsibilities that the four of us have, and every Member of the Senate has, is to recommend nominees for the Federal bench. I put probably more time on this than any other single activity in my Senate responsibilities.

We recently had the case of Governor Meskill. I have found the ABA immensely helpful through the years with its investigative work and so forth. I look upon its recommendations as valuable, but I have always opposed its reports being binding on the administration. I think that President Nixon's pledge that he would never take anyone other than someone approved by the ABA was wrong. I do not see how he could delegate to a nonelected body that responsibility given to him by the Constitution. So I oppose that position. But I respect and admire what the ABA has done.

I was a little concerned when it engaged in lobbying activities. The ABA came down with a decision in the *Meskill* case. Then the ABA started to lobby. Even though I agreed with its decision on the *Meskill* case—unhappily, I might add—I did not feel it appropriate for the ABA to lobby Members of the Congress.

What is your own personal judgment of that, just as a matter of advice to ABA? I would be interested in your answer because I engage in extensive correspondence with ABA about this matter and I did express myself a little strongly on it.

Mr. TYLER. If your question is whether they should be making any lobbying effort once they——

Senator PERCY. I would like your own personal judgment, unrelated to legislation, of whether or not it is wise for the ABA to engage in lobbying activities with respect to a Federal judge nomination once it has made its recommendation to the Justice Department and to the President, and declared the man was qualified, well qualified, nonqualified or whatever.

Mr. TYLER. That is a difficult one to answer particularly in the context of this law. But I gather that is not really your question.

Senator PERCY. If you choose not to answer, feel perfectly free not to do so. We value your personal judgment and I think the ABA would value your judgment on that, because it is a policy question I presume it will have to face up to now, because there is some criticism of the activity.

Mr. TYLER. Yes, there is. I believe that Mr. Reese Smith, the new chairman of that committee, with whom I have some communications on a regular basis, is individually concerned as is his committee as a whole to reappraise what they did in the nomination of which you speak.

My own personal view is—and I emphasize it is only a personal view—that certainly the ABA should be able to say what their views are to the Judiciary Committee. I assume that they can do that by testimony and correspondence.

I would think from their own point of view, it would be a doubtful tactic to lobby thereafter by trying to approach individual Senators across the board.

Senator PERCY. As an organized activity, but not to detract from their ability as individual constitutents of ours to express their views like any other citizen who expresses their view.

Mr. TYLER. Right.

Senator PERCY. But not in an officially formalized or organized activity.

Mr. TYLER. I would personally regard that as not terribly effective or official from the ABA's own viewpoint.

On the other side of the coin, I think it presents some difficulties because they do have access through present procedures to the Judiciary Committee to express their views in writing and orally. Of course, neither of these viewpoints has much to do with our present statutory problem, but they are the best answers I can provide to your questions.

Senator PERCY. Thank you very much.

Chairman RIBICOFF. Senator Chiles?

Senator METCALF. Would the Senator yield to me so that I could end?

Senator CHILES. Yes.

Senator METCALF. Yesterday it was brought out in testimony that the U.S. Chamber of Commerce spent only $285 for lobbying activities, in accordance with their report, in the last quarter of last year.

If you will recall, Mr. Tyler, the strip mining bill was on the floor; the consumer bill was on the floor; the ERDA bill was on the floor—I am not going to give you the laundry list of all the things that the U.S. Chamber of Commerce was concerned about.

I am not saying that the U.S. Chamber of Commerce deliberately violated the bill, or gave a false report. But $285 is certainly misleading. Should we amend the act so that a lobbying organization such as the chamber should have to come in and make a more forthright report?

Mr. TYLER. One of the concerns you speak of in your question is the present definition of lobbyist that is keyed to the amount of income and expenditures and the like.

Senator METCALF. Yes, exactly.

Mr. TYLER. I must say I am taken aback to hear what you say, because that would mean that the present language in S. 815 might not meet this problem.

Senator METCALF. Would you help us in getting some legislation that would meet the problem?

Mr. TYLER. Mr. Keeney has just suggested something, Senator Metcalf, that might be useful and perhaps we can develop it.

If this is the kind of problem that you are encountering, maybe there ought to be some requirement that there be access to books and records of an organization to ascertain just what——

Senator METCALF. For professional lobbyists.

Mr. TYLER. Right.

Senator METCALF. You are the one that is going to have to enforce this law. How about giving us some suggestions as to language that will take care of this?

Mr. TYLER. I think, as Mr. Keeney also just whispered, we might be able to work with the Foreign Registration Act by way of an analog. So we will come up with something.

I did not realize that large organizations might not be directly expending large sums of this kind. I just assumed that everybody agreed that they did.

Senator METCALF. Believe me, I am not saying that the U.S. Chamber of Commerce has violated the law, but they reported only $285. I personally know that they were up here on several bills. There is something wrong with the law.

Mr. TYLER. I will certainly respond to that.

Senator METCALF. Thank you Senator for yielding.

Senator CHILES. Mr. Chairman, I do not have any questions as such. I do have sort of a comment after listening to his testimony and reading the act. It appears to me that the public is entitled to know what organized efforts are being made to influence legislation. The public is entitled to know what tactics, the amount of money, and other things that are being expended by way of favors or otherwise to be of benefit in trying to influence legislation.

I wonder if the bill does not have some problems in that if it is trying to cover legislation and also in the problem before the executive agency such as rulemaking and all of the other things that come before the executive agencies, because I think historically even though the current lobbying, as such did derive from those efforts that were made to influence legislation.

If we really are talking about how we control the ex parte communications that are going on in the executive branch, and if we are not going to have to look at the possibility of determining whether we can cover all of this in one particular bill—of whether we are dealing with two different kinds of matters, even though they are related, and even though there is certainly a tremendous influence on how the people's lives are conducted by the decisions that are made by the executive branch, it is still a little different from legislation.

I am making these remarks because one of the provisions of the sunshine bill that the subcommittee is now reporting, and which will be before the full committee for markup, it provides for a record-keeping process on ex parte communications before any agency dealing with the form of rulemaking. This is an attempt to get into that without quite getting into the full background of saying everybody at a GS–15 has to keep sort of a report on him of any conversation he has, which I think most of us realize will be impossible to do.

Whether we can cover both of those areas in this bill, I am not sure. We will have to concentrate on this bill on the legislative aspect and then try to deal with the ex parte communications before the executive agencies or some requirement that they come up with their own rules in another form of legislation.

Chairman RIBICOFF. Thank you very much. I do appreciate the three of you being with us today. You were very helpful. Our staff will keep in touch with you.

Mr. TYLER. Very good. Thank you.

[Prepared statement of Harold R. Tyler, Jr., follows:]

Prepared Statement of Mr. Harold R. Tyler, Jr.

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to present the views of the Department of Justice on S. 774 and S. 815, two bills to regulate lobbying and related activities.

The Department of Justice supports an improved, strengthened and clarified lobbying law similar to S. 815. However, we firmly oppose those provisions of S. 774 and S. 815 that would deprive the Attorney General of his traditional criminal and civil litigation authority to enforce federal statutes. Those provisions raise serious constitutional questions and jeopardize a vigorous and evenhanded enforcement of the lobbying laws.

We also have strong apprehensions about several other provisions in each of the two bills, including extension of the Lobbying Act's coverage to include Executive Branch activity, the provisions of S. 774 which require logging of outside contacts by persons of Grade GS-15 or above in the Executive Branch, and certain aspects of both bills relating to tax-exempt and charitable organizations.

I. THE 1946 LOBBYING ACT

S. 774 and S. 815 may usefully be discussed in light of the provisions in and problems created by the current Lobbying Act (2 U.S.C. 261-70). Enacted in 1946, that Act's objective was to require public disclosure of lobbyists, their expenditures, and their financial supporters. As stated by the Supreme Court, "[The Act] wants only to know who is being hired, who is putting up the money, and how much." United States v. Harriss, 347 U.S. 612, 625 (1954).

To achieve its objectives, the Act requires certain individuals and organizations who receive compensation or other consideration for attempting to influence federal legislation to register with the Clerk of the House of Representatives and the Secretary of the Senate. Such persons must file quarterly statements disclosing the identity of any person or organization they represent, the source of their funding, the purposes of expenditures made for lobbying purposes, and the legislative objectives they seek to achieve. The Act excludes from its coverage newspapers and other regularly published periodicals which urge the defeat or passage of legislation so long as they do not engage in lobbying activities outside the regular course of business. A violation of the Act is punishable by a fine, imprisonment, and a three year prohibion against any lobbying activity.

A. The Harriss Case

The constitutionality of the Act was upheld in United States v. Harriss, supra. The Court rejected the claims that the criminal sanctions of the Act violated the First Amendment or that the Act was unconstitutionally vague. However, the Court interpreted the Act so restrictively it lost most of its vitality. First, it concluded that the Act applied only to lobbyists who receive contributions from others, thereby excluding those who expend their own money to influence legislation. Second, the Court held that the Act applied only to lobbyists who directly and personally communicate with members of Congress for the purpose of influencing legislation. Third, the Court construed the Act to apply only to persons whose activities in substantial part are directed toward influencing legislation and only to contributions made principally to influence legislation.

B. Reasons for the Act's Ineffectiveness

Since its inception and through numerous administrations, the Act has been ineffective. Several reasons explain this result. Perhaps the most important is its narrow application. In this connection, Harriss has enabled many persons to escape from the Act's provisions because (1) their lobbying activities were not their principal activity, (2) their communications were with Congressional staff members rather than with

Congressmen, or (3) they did not receive contributions for the primary purpose of influencing legislation. The Act thus covers only a small portion of all lobbying activity.

A second reason for the Act's ineffectiveness is its enforcement provisions. The required registration and reports must be filed with the Clerk of the House and the Secretary of the Senate. However, these officers have served merely as repositories of the records without any affirmative responsibility to investigate possible violations of the Act or to refer complaints to the Department of Justice. The Department of Justice is authorized to enforce the Act's criminal sanctions, but lacks specific authority to monitor lobbying activities. Instead, as in the case of many federal criminal statutes, the Department's involvement begins once complaints have been filed or referrals have been made. Since neither the Clerk of the House nor the Secretary of the Senate may monitor violations of the Act, they make few referrals to the Department of Justice. Consequently, relatively few prosecutions have been brought.

Finally, the Act provides only for criminal sanctions, clearly inappropriate for minor or unintentional violations. Improved enforcement could be achieved by providing alternative civil sanctions, such as those provided in S. 774 and S. 815.

A recent General Accounting Office report 1/ concluded that the unimpressive record of enforcing and administering the Act has been due to several key factors: an unclear and ineffective statute, inadequate authority conferred on the Clerk of the House and Secretary of the Senate, lack of statutory guidelines as to the Department's responsibility in seeking out potential violators, and the fact that the Department has no specific written criteria on whether a complaint should be investigated.

Certainly, it would be most unfair to attempt to pin the blame for past inadequate enforcement on specific administrations, the Clerk of the House, the Secretary of the Senate or the Department of Justice officials. So far as the Department of Justice is concerned, I am advised that since the Harriss Case, our principal efforts have been directed toward bringing the Act to the attention of those to whom it is potentially applicable and promoting voluntary compliance. This technique may be suitable enough for those whose noncompliance is inadvertent or unintentional; it is not the answer to deliberate violators.

1/ Report by the Comptroller General of the United States, to the Committee on Government Operations, U.S. Senate, The Federal Regulation of Lobbying Act -- Difficulties in Enforcement and Administration, April 2, 1975, pp. 9-11.

Mr. Chairman, the Department welcomes the opportunity to work with the Congress toward curing the defects in the present Lobbying Act, bearing in mind the careful balance to be drawn between First Amendment rights on the one hand, and the importance of protecting the integrity of the legislative process from special interests seeking favored treatment on the other.

II. S. 774 and S. 815

Both S. 774 and S. 815 expand the coverage of the Act in ways which the Department generally supports. However, the Department opposes provisions of those bills which would (1) divest the Attorney General of civil and criminal enforcement powers, an important point which I would like to develop later in my testimony, (2) have the Act apply to Executive Branch policymaking, except to the extent of approaching Executive Branch officers or employees to influence the legislative process, (3) require burdensome record keeping by those officers and employees, and (4) preclude the Internal Revenue Service from using an organization's compliance with the Act as some evidence that it had engaged in lobbying activity forbidden to certain tax-exempt organizations.

A. Extension of Coverage to Executive Branch - Record Keeping Requirements

We oppose wholesale extension of the Lobbying Act to all policymaking and other activities in the Executive Branch.

Legislation of this sort should not be made applicable to many of the numerous contacts made with the Executive Branch in connection with the execution of federal laws. For the Department of Justice alone, S. 815 could be construed to require registration and reporting by every potential defendant, witness, informant or attorney who contacts the Department. Such extension of the Act might thus discourage the informal reporting of law violations and subject those who make the reports to reprisals.

In addition, with regard to the related issue of the record keeping which section 7(a) of S. 774 would require of all Executive Branch officials and employees in Grades GS-15 or above, it should be noted that the character and activities of administrative agencies and departments vary greatly. The enforcement problems of applying the Act so broadly in a novel area can only be dimly perceived. The Department recommends that any lobbying legislation which would impose registration and reporting requirements on the Executive Branch be confined in its scope to contacts intended to enlist the assistance of Executive Branch officers and employees in connection with a pending or proposed legislative program, or in other ways to intercede in the actual legislative process.

B. Provisions Concerning Tax-Exempt Organizations

The Department also opposes section 6 of S. 774 and section 7 of S. 815, virtually identical provisions concerning tax-exempt organizations under the Internal Revenue Code. Section 7 of S. 815 provides as follows:

> Compliance with the requirements of section 4, 5, or 6 of this Act shall not be taken into consideration in determining, for purposes of the Internal Revenue Code of 1954, whether a substantial part of the activities of an organization is carrying on propaganda or otherwise attempting to influence legislation.

We understand that this provision is intended to prevent tax-exempt organizations and charitable organizations from losing their special tax status under certain provisions of the Internal Revenue Code of 1954, merely because they comply with the disclosure requirements of the Act (e.g., section 4 of S. 815, notice of representation; section 5, maintenance of records; section 6, filing of reports). For example, section 501(c)(3) of the Internal Revenue Code of 1954 lists certain tax-exempt organizations, "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

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We can readily understand that mere compliance with disclosure requirements of the Act should not be regarded by the Internal Revenue Service as presumptive or conclusive evidence that a "substantial part" of that organization's activities consist of carrying on propaganda or otherwise attempting to influence legislation. On the other hand, registration could be some indication that an exempt organization is engaging in, or expects to engage in, attempts to influence legislation. In any case which brings the propriety of the exemption into question, all the actual activities of the registering organization would normally have to be established in determining whether it is engaged in lobbying to a substantial degree.

We assume that this is the extent, and only the extent, to which section 6 of S. 774 and section 7 of S. 815 is intended to go. As the provisions read, however, they may be construed as precluding the government from considering materials filed in compliance with the Act which are known to the public at large. We oppose any provision that does not permit the government "to consider," and use, information furnished under oath or affirmation and intended to be made public. Indeed it would be an anomaly not to do so here. We do not think section 6 of S. 774 and section 7 of S. 815 in their present form represent wise policy.

C. Enforcement Provisions

With respect to the problem of enforcement, the bills would attempt to cure past deficiencies by lodging investigative and enforcement authority in the Federal Election Commission. The Department strongly opposes these provisions on the grounds that they are both unwise as a matter of policy and raise serious constitutional difficulties.

1. Conferring Litigation Authority on the Federal Election Commission

Both S. 774 and S. 815 vest enforcement authority in the Federal Election Commission, but there is one essential difference between them. S. 815 recognizes the importance of preserving the Attorney General's exclusive authority to enforce criminal offenses under the Act. S. 774 would vest the entire criminal enforcement authority in the Commission to the exclusion of the Attorney General. Both bills would empower the Commission alone to initiate civil injunction suits to compel compliance with the Act. Under S. 774, however, the Department would lack authority to enforce any civil or criminal violation of the Act unless the Commission consented. It should be noted that the Commission is basically a legislative body, since a majority of its members are appointed and removable by Congress. The President nominates only two of its six members. Sec. 310, P.L. 93-443.

To vest exclusive authority in the Commission to conduct or control enforcement of federal criminal or civil laws may violate the doctrine of separation of powers inherent in the Constitution. Essential to this doctrine is the principle that the legislative power should not encroach upon the executive power to enforce the laws. As was said in Springer v. Philippine Islands, 277 U.S. 189, 202 (1928):

> "Legislative power, as distinguished from the executive power is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions . . . . [T]he legislature cannot engraft executive duties upon a legislative office, since that would be to usurp the power of appointment by indirection . . . ." (Underscoring added.)

To be sure, Congress by legislation may define criminal offenses, establish presumptions and rules of evidence, and legislate in many other areas of concern to the Department of Justice. But once Congress has acted in these respects, it is difficult to imagine a function more clearly executive than the enforcement of the federal laws. Indeed, it is a constitutional function assigned to the President by Art. II, Section 3. For Congress to take that function, or a large

part of it, and lodge it in officers who are not subject to appointment or removal by the President would alter the fundamental distribution of powers laid down by the Constitution. Such legislation "would make it impossible for the President, in case of political or other differences with the . . . Congress to take care that the laws be faithfully executed." (Myers v. United States, 272 U.S. 52, 164 (1926)).

When this appointment process is read together with S. 774 and S. 815, the intention and consequences are clear. Under the proposed bills, the enforcement of the Lobbying Act would be vested in the Commission, over which the President would have no right of supervision, direction or control. The President could not possibly discharge his constitutional duty to execute the law in the face of such legislation. "The Attorney General," the Supreme Court has said, "is the hand of the President in taking care that the laws of the United States in legal proceedings and in the prosecution of offenses, be faithfully executed." Ponzi v. Fessenden, 258 U.S. 254, 262 (1922); United States v. Cox, 342 F. 2d 167, 171 (5 Cir. 1965), certiorari denied, 381 U.S. 935. In the latter case, Judge Wisdom noted: "The prosecution of offenses against the United States is an executive function within the exclusive prerogative of the Attorney General." 342 F. 2d at 190.

Presumably the underlying justification for S. 774 and S. 815 is that lobbying offenses have such political overtones that whatever administration is in power cannot be counted on vigorously to enforce them. But the mere fact that there has been inaction in this field in the past, for whatever reasons, is insufficient to provide constitutional support to the concept of a legislative office exercising executive functions.

With respect to civil litigation, both bills represent an undesirable departure from the general statutory scheme to centralize litigative responsibility in the Attorney General. See 28 U.S.C. 514-519. It is true that Congress in the past has given express authority to certain independent agencies to enjoin violations and otherwise to control civil litigation arising out of their administration of a federal statute. 2/ But in each of these cases, the members of the agencies were appointed by the President with the advice and consent of the Senate. Although their independence is constitutionally assured to the extent that they exercise quasi-judicial or quasi-legislative power (see Humphrey's Executor v. United States, 295 U.S. 602 (1935), these agencies are regarded as

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2/ See e.g., 49 USC 16 (11)-(12), Interstate Commerce Commission; 16 U.S.C. 825m(c), Federal Power Commission; 42 U.S.C. 2000e-4g(6), 5(f), Equal Employment Opportunity Commission; 29 U.S.C. 154(a), National Labor Relations Board.

being in the Executive Branch, not in the Legislative Branch. This cannot be said of the Federal Election Commission, which is intended to be primarily a legislative office, not only in composition but also in administration.

With respect to criminal litigation, S. 774 would be a sweeping and extraordinary departure from the traditional exclusive authority vested in the Attorney General to enforce the federal criminal laws. If a challenge to the constitutionality of the Commission's criminal law enforcement authority was sustained, it might jeopardize the validity of all previous convictions obtained inder the Act. 3/

3/ There are special legal hazards in placing the civil or criminal enforcement authority in the Federal Election Commission. The constitutionality of the method of appointing Commission members is currently under attack in a federal district court. Buckley, et al. v. Valeo et al, Civil No. 75-0001 (D. D.C. 1975). If that challenge is sustained, enforcement actions taken by the Commission in the interim might be jeopardized. Actions taken by officers occupying an unconstitutionally created office may not be validated by the de facto officer doctrine. In Norton v. Shelby County, 118 U.S. 425 (1886), the Supreme Court held that the acts of local commissioners in signing local bond issues were null and void because the statute creating their offices was unconstitutional. The Court reasoned that an occupant of an office that was a legal nullity could not be a de facto officer (118 U.S. at 441). A court might conclude that the Commission offices were unconstitutional because beyond the control of the President. Accordingly, under Norton v. Shelby County none of the acts of persons occupying those offices could be validated by the de facto officer doctrine. Thus, under S. 774 or S. 815 the legality of every enforcement action taken by the Commission might be jeopardized.

There are also practical objections to vesting criminal and civil enforcement authority in the Commission. Its members have only recently been appointed. It is still in the process of forming a legal staff. We understand that its immediate administrative workload in handling matters under the Federal Election Campaign Act Amendments of 1974 is already overwhelming. The wisdom of adding to this workload the new and complex functions of enforcing the Lobbying Act Amendments, possibly through inexperienced personnel, may therefore be questioned.

2. Supreme Court Litigation

It is unclear whether the Commission would have authority under either S. 774 or S. 815 to seek review and argue cases in the Supreme Court. Under Chapter 96 of the 1974 Act, called the Presidential Primary Matching Payment Account Act, the Commission is expressly authorized on behalf of the United States to conduct Supreme Court litigation relating to judgments entered under that Chapter. Sec. 9040(d). Though similar explicit language is absent in both S. 774 and S. 815, each bill provides that the Commission shall have authority, through its General Counsel, to initiate, prosecute, defend, or appeal any civil or criminal action. Sec. 8(a)(5), S. 774; Sec. 8(a)(6), S. 815. It may be urged that the Commission's power to appeal any action through its General Counsel includes the right to seek Supreme Court review of judgments--civil

and criminal--entered in Lobbying Act cases. The Department continues strongly to oppose any attempt to dilute the Solicitor General's control over government participation in Supreme Court litigation.

There are many reasons for this control. It insures that the government will present to the Supreme Court only those cases that meet the Court's exacting standards of review. It avoids inconsistencies in the positions the government takes before the Court. It is important that the positions taken by a single agency on a question of general concern to the federal government reflect the overall best interests of the entire government, and not just that particular agency's interest in winning the particular case. It is equally important to avoid bringing before the Court a weak case, because of its facts and particular setting, which may create a damaging precedent not only for the Commission but for the entire government. This possibility is avoided, or at least greatly minimized, when the Supreme Court litigation is under the Solicitor General's overall control.

Finally, Chief Justice Burger has expressed the strong opposition of the entire Supreme Court to legislation diluting the Solicitor General's authority over government cases coming

before it. 14/ For these reasons, the Department of Justice would strongly urge the repeal of section 9040(d) of the 1974 Act which confers Supreme Court litigating authority on the Commission.

CONCLUSION

In conclusion, I would like to emphasize that the Department of Justice understands and shares the Committee's concern to improve a statute that has been largely unworkable from its inception. To that end, we have carefully reviewed both bills under discussion and will soon present to you an "Appendix" to this testimony which contains suggestions designed to tighten and strengthen proposed lobbying provisions. The Department, of course, stands ready to provide further assistance to the Committee in studying and correcting this problem.

14/ "It is the unanimous view of the Justices that it would be unwise to dilute the authority of the Solicitor General as to Supreme Court jurisdiction in cases arising within the Executive Branch and independent agencies. It is very likely that there would be an increase in the workload of the Supreme Court if matters could be brought here without the concurrence of the Solicitor General. Even more important, perhaps, the Solicitor General exercises a highly important role in the selection of cases to be brought here in terms of the long-range public interest." Hearings before the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, 92d Cong., 1st Sess., Series 92-37b, pt. 3 at 1809 (1972).

APPENDIX I

to

Statement of

Harold R. Tyler, Jr.
Deputy Attorney General

Before the

GOVERNMENT OPERATIONS COMMITTEE
UNITED STATES SENATE

May 15, 1975

HEARINGS ON LOBBY REFORM LEGISLATION

Appendix

S. 774 and S. 815

1. Section 2(1) of S. 774 defines the term "person" as used in the Act. We suggest adding to this definition after the word "individual" (p. 1, line 10 of S. 774), the words "and any other organization or group of persons". After the words "other organization" at the end of section 3(a) of S. 815, we suggest adding the words "or group of persons".

2. The prohibition against lobbying would apply to "the policymaking process", as defined by section 2(2) of S. 774 to mean "any action taken by a Federal officer or employee with respect to any bill, resolution, or other measure in Congress, or with respect to any rule, adjudication, or other policy matter in the executive branch."

As section 2(2) relates solely to legislative matters, it is too vague and narrow. We suggest including more specific language such as "effecting or preventing the introduction, passage, defeat or amendment of legislation, including any bill, resolution, proposed constitutional amendment, nomination, hearing, report, and other matters pending or proposed in either House and any other matter which may be the subject of action by either House."

As section 2(2) relates to matters ("rule, adjudication, or other policy matter in the executive branch"), it is too

vague and broad as possibly encompassing matters which are not confined to legislation, but rather to the discharge of functions and duties of the executive branch having no connection whatever with, or relationship to, legislation. In our opinion, the language "or with respect to any rule, adjudication, or other policy matter in the executive branch" (p. 2, lines 2-3) should either be entirely deleted or clarified so as to be restricted to lobbying intended to enlist the support of officers and employees in the executive branch for or against a legislative program or otherwise to influence the legislative process.

The definition of section 3(b) of S. 815 of "policymaking process" is more satisfactory up to the words, "or other action in Congress," (lines 11-12 of p. 3). The remainder of that sentence "or with respect to any pending or proposed rule, adjudication, hearing, investigation, or other action in the executive branch" should be dealt with as suggested regarding the same language in S. 744, discussed above.

3. The definition of "income" in section 2(4) of S. 774 is inadequate. We prefer the broader definition of income in section 3(d)(1),(2) of S. 815.

4. The definition of "expenditure" in section 2(5) of S. 774 is too narrow. While the definition of "expenditure" in section 3(e) of S. 815 is an improvement, it does not go far enough. We prefer the following definition:

> The term "expenditure" includes a payment, distribution, loan, advance, deposit or gift of money or anything of value made, disbursed or furnished; or a promise, contract, or agreement, whether or not legally enforceable, to make an expenditure, and includes expenditures by any other persons to further activities of the person filing a statement, and not separately reported by such other persons.

5. The term "lobbying" is defined and the exemptions from that term are set forth in section 2(9) of S. 774 and section 3(i) of S. 815. We prefer the provision in section 2(9)(A) of S. 774 which would provide an exemption if an appearance or testimony is given "at the request of such department, agency, or entity." In our opinion, the exemption, otherwise available, should not be forfeited or lost merely because it is not "made a matter of public record by the committee. . . or agency," as provided by section 3(i)(1) of S. 815. There are matters heard in executive session or in confidence, which for reasons of security or safety could not be made a matter of public record.

6. Section 2(9)(B) of S. 774 provides an exception from the definition of "lobbying" for "any communication or solicitation by a Federal officer or employee". This exception is narrower than the one included in existing 2 U.S.C. 267, which is available to "any public official acting in his official capacity". The term "public official" reasonably construed, embraces not only officers and employees of the Federal Government but also those representing the States and their political subdivisions. Section 3(i)(2) of S. 815 uses clearer and broader language as a basis for exception, as follows:

> a communication or solicitation by a Federal officer or employee, or by an officer or employee of a State or local government, acting in his official capacity.

We support the idea of exempting from the Act lobbying communications between State or local officials (or their immediate staffs) acting in their official capacity, with their Federal counterparts. On that basis section 3(i)(2) of S. 815 might be more appropriate than section 2(9)(B) of S. 774. On the other hand, we oppose the notion that a paid, professional lobbying organization which represents a State or local government should enjoy the same exception as the

State or local officials themselves. For example, in Bradley v. Saxbe, 387 F. Supp. 53 (D.C.D.C. 1974), it was held that the National League of Cities was entitled to an exemption under 2 U.S.C. 267. In order to avoid a similar result, the language of section 3(i)(2) of S. 815 should be tightened by adding this proviso:

> Provided, however, that this exception shall not apply to a "lobbyist" as defined by subsection (j), acting on behalf of such State or local government.

7. We prefer the tighter exemption language in section 3(i)(3)(C) of S. 815, "a book published for the general public" to section 2(9)(C)(3) of S. 744, "a book publisher", since the latter's resources may more readily be utilized solely for lobbying purposes than in a case where a communication appears in a "book published for the general public."

We also assume that the words "in the normal course of business" in section 2(9)(C) of S. 774 and section 3(i)(3) of S. 815 are intended to make available the exemption if the various communications are carried by media in the performance of their functions that are part of the public communications media generally, but that the exemption will not apply where the material relates to the direct economic interests of the media rather than to the dissemination of public information.

8. The term "lobbyist" is defined by section 2(10) of S. 774 to mean among other things "any person" who engages in lobbying during any quarterly period and who "receives" a specified income attributable to lobbying, or who "makes" an expenditure of $250 or more for that quarter or an expenditure "of $500 or more for lobbying during a total of four consecutive quarterly filing periods. . . ." This objective monetary standard is designed to clarify the ambiguous concept of "principle purpose" employed in the present lobbying act. In defining the term "lobbyist," section 3(j)(1) of S. 815 adds another condition -- "when lobbying is a substantial purpose of such employment or activity. . . ." In this respect we think that S. 815 may be introducing a subjective test that is as difficult to administer and enforce as the existing provision.

Section 3(j)(3) of S. 815 provides a definition of "lobbyist" (which is not included in S. 774), as follows:

> a person who engages in lobbying and who "in the course of lobbying during a quarterly filing period communicates orally on eight or more separate occasions with one or more Federal officers or employees."

It will be noticed that this definition would come into play regardless of whether or not any expenditure is made. On

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its face, the language used is vague unless the communications with Federal officers or employees were related to influencing legislation. Moreover, why the number "eight or more" is selected as the cut-off is puzzling. On balance the problems this subsection could raise in policing communications may be so difficult, confusing and burdensome that we believe that it should be deleted.

9. In United States v. Harriss, supra, 347 U.S. at 619-620, the Court rejected the Government's contention that under section 305 of the Federal Regulation of Lobbying Act, a person must report his expenditures to influence legislation even though he does not solicit, collect or receive contributions as provided by section 307 of that Act, but merely expends his own funds for that purpose. The Court suggested that if the Government's construction is to become law, "that is for Congress to accomplish by further legislation." Id. at 620. We assume that the language used in section 2(10)(C),(D) of S. 774 and section 3(j)(2) of S. 815 is intended to cover a person who expends his own funds to influence legislation. It seems to us, however, that this intention would be clarified if there were added a new subsection at the end of section 2(10) of S. 774 and section 3(j) of S. 815, as follows:

( ) the term "lobbyist" as defined in this section shall also include any person who engages himself to influence legislation, in person or through any other person.

10. S. 815, Sec. 4(a)(4), p. 8, line 5.

Prior to the word "committee", you may wish to add the words, "Federal Government."

11. As regards "Notice of Representation", section 4(b) of S. 815 contains a provision (not found in section 3 of S. 744), which we favor. It provides that each notice of representation filed by a lobbyist under section 4(a) shall be amended by the lobbyist "at such interval of time as the Commission shall prescribe to reflect the current activities of the lobbyist."

In order to avoid possible constitutional objection, the Committee may also wish to consider a provision in the section on filing of notices of representation to this effect:

Section 4 shall not be construed to require the disclosure of the membership rolls or the organizational dues structure of any voluntary membership organization or similar organization.

12. Section 4(4) of S. 744 contains a record-keeping provision not included in S. 815, which appears to be desirable. It requires record-keeping of

> (4) Each expenditure made directly or indirectly to or for any federal officer or employee.

13. We prefer the more specific and detailed reporting requirements in section 6 of S. 815 to those of section 5 of S. 744.

14. Section 6 of S. 774 and section 7 of S. 815 are virtually identical provisions. Section 7 of S. 815 provides as follows:

> Compliance with the requirements of section 4, 5, or 6 of this Act shall not be taken into consideration in determining, for purposes of the Internal Revenue Code of 1954, whether a substantial part of the activities of an organization is carrying on propaganda or otherwise attempting to influence legislation.

We understand that this provision is intended to prevent tax-exempt organizations and charitable organizations from losing their special tax status under certain provisions of the Internal Revenue Code of 1954, merely because they comply with the disclosure requirements of the Act (e.g., section 4 of S. 815, notice of representation; section 5, maintenance of records; section 6, filing of reports). For example, section 501(c)(3) of the Internal Revenue Code of 1954 lists certain tax exempt organizations "no substantial part of the

activities of which is carrying on propaganda, or otherwise attempting, to influence legislation. . . ."

We can readily understand that mere compliance with disclosure requirements of the Act should not be regarded by the Internal Revenue Service as presumptive or conclusive evidence that a "substantial part" of that organization's activities consists of carrying on propaganda or otherwise attempting to influence legislation. On the other hand, registration could be some indication that an exempt organization is engaging in, or expects to engage in, attempts to influence legislation. In any case which brings the propriety of the exemption into question, all the actual activities of the registering organization would normally have to be established in determining whether it is engaged in lobbying to a substantial degree.

We assume that this is the extent to which section 6 of S. 774 and section 7 of S. 815 is intended to go. As the provision reads, however, it may be construed as precluding the Government from considering materials filed in compliance with the Act which are known to the public at large. We oppose any provision that does not permit the Government "to consider", and use, information furnished under oath or

affirmation and intended to be made public. Indeed it would be an anomaly not to do so here. We do not think section 6 of S. 774 and section 7 of S. 815 in their present form represent wise policy.

15. Section 7(a) of S. 744 would require all officials and employees of the executive branch in Grades GS-15 or above, as those responsible for making or recommending decisions affecting the policymaking process in the executive branch, to prepare a record of each oral or written communication received directly or by referral from outside parties expressing an opinion or containing information with respect to such process.

It may be noted that S. 815 does not contain this burdensome requirement, which may relate to decisions affecting the policymaking process in the executive branch that do not involve legislative lobbying.

If the requirements of the bill relating to the executive branch are eliminated, or clarified as we suggest in our discussion of section 2(2) of S. 744, a corresponding change should be made in section 7(a). Apart from that, it may be noted that the character and operations of administrative agencies and departments vary greatly. You may wish to

consider whether a desirable substitute for section 7(a) might require all agencies and departments to establish their own reporting machinery where attempts are made to enlist the support of executive branch employees regarding a legislative program. A self-policing requirement of this kind should suffice to discourage outside attempts to influence the judgment of executive employees in such matters.

In addition to these objections, section 7(a) is literally, so broad, that it would seem to apply to the most casual type of citizen-complaint concerning any affairs of the federal government. Any federal officer or employee who, "knowingly and wilfully" inter alia fails to file any record of such complaint as required by such section could be fined up to $5,000 or imprisoned for two years, or both. We think that this provision is so vague as to leave many Government employees in great jeopardy or possible harassment. Since section 7(a) of S. 744 is not readily susceptible of application, compliance or enforcement, we oppose it.

16. Section 11 of S. 815 grants authority to the Commission in the first instance to endeavor to correct violation by informal methods of conference, conciliation, and persuasion. If these methods fail, the Commission is authorized to

institute a civil action for injunctive relief. Sec. 11(a)(5). Paragraph "(7)," of the same section 11(a) would provide that whenever in the judgment of the Commission, any person has engaged in unlawful conduct, "upon request by the Commission," the Attorney General on behalf of the United States "shall" institute a civil action for an injunction or other appropriate relief.

It is not clear whether under section 11(a)(5) and (7) the Commission or the Attorney General will have the primary enforcement responsibility. Apart from that, we would urge that the word "shall", (line 25, p. 21) be changed to "may", making clear the intention that the Attorney General retains discretion whether to bring suit for an alleged violation. It is true that in some cases depending on the setting, the word "shall" in a federal statute has been construed to be "may". See Hecht Co. v. Bowles, 321 U.S. 321 (1944). But needless litigation can be avoided by use of more precise language. Above all, it is important that the Attorney General not be divested of discretion in the enforcement area. As

one Court of Appeals has stated:*/

> The discretionary power of the attorney for the United States in determining whether a prosecution shall be commenced or maintained may well depend upon matters of policy wholly apart from any question of probable cause.

In exercising enforcement powers under the Lobbying Act, the Attorney General should not be a "rubber stamp." The decision whether to bring an action involves the exercise of judgment. Among other elements that go into a decision to sue, is whether the Government litigation will promote the ends of justice, instill respect for the law, and advance the national policy involved in the federal statute. These aims can best be achieved if the Attorney General is able to exercise discretion in initiating suit under the Act, a power customarily granted to, and exercised by him under other federal statutes.

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*/ United States v. Cox, 342 F. 2d 167, 171 (5 Cir. 1965), cert. denied 381 U.S. 935. See also United States v. Brown, 481 F. 2d 1035, 1042-43 (8 Cir. 1973); Inmates of Attica Correctional Facility v. Rockefeller, 477 F. 2d 375, 379-80 (2 Cir. 1973); United States v. Bland, 472 F. 2d 1329, 1335-36 (D.C. Cir. 1973).

APPENDIX II

to

Statement of

Harold R. Tyler, Jr.
Deputy Attorney General

Before the

GOVERNMENT OPERATIONS COMMITTEE
UNITED STATES SENATE

May 15, 1975

HEARINGS ON LOBBY REFORM LEGISLATION

Appendix II

Constitutional Issues Raised by Placing Litigating Authority to Enforce the Lobbying Act in the Federal Election Commission

Article II, § 1 of the Constitution vests the executive power of the United States in the President. Article II, § 3 commands the President to "take care that the laws be faithfully executed." The plain language of the Constitution, the history of these sections, and the case law compel the conclusion that: First, the enforcement of the laws is an inherently executive function; and second, the executive branch has the exclusive constitutional authority to enforce the laws, except in the rare circumstance where Congress has authorized an independent establishment to exercise limited enforcement power as "incidental" to its delegated quasi-legislative or quasi-judicial power.

A. Enforcement of Federal law is inherently an executive function.

Every proposal at the Constitutional Convention placed the power to execute the national laws in the Chief Executive. 1/ No delegate dissented from the statement of James Wilson, one of the foremost participants in the framing of the Constitution,

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1/ See, 1 M. Farrand, The Records of the Federal Convention of 1787 (1937 Ed.), 21, 63, 65-66, 226, 244, 292 (hereinafter "Farrand"); 2 id. at 23, 116, 185, 404-405, 597.

that the "only powers he conceived strictly Executive were those of executing the laws . . . ." 2/ James Madison stated in the First Congress "that if any power whatsoever is in its nature executive, it is the power of appointing, overseeing, and controlling those who execute the laws." 3/

In the Federalist No. 77, Hamilton wrote that no objection had been made to the provision giving the President the duty to faithfully execute the laws.

The reason for separating the power to enact laws from the power to execute them was explained by Montesquieu, and quoted with approval by Madison in the Federalist No. 47:

> When the legislative and executive powers are united in the same person or body there can be no liberty, because apprehensions may arise lest the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner.

Because the Federal Election Commission is basically a legislative body, 4/ to provide it litigating authority would combine

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2/ Id. at 65-66.

3/ 1 Annals of Congress 481-482 (1789). Madison also stated during the Constitutional Convention that "certain powers were in their nature executive, and must be given to that department . . . ." Madison then urged that the Convention enumerate these inherently executive powers in the Constitution. Madison himself proposed as one of these enumerated executive powers the "power to carry into effect the national laws . . . ." (2 Farrand 66-67).

4/ Four of the six members of the Commission are nominated and confirmed by Congress. The two other members are nominated by the President and confirmed by both the Senate and the House of Representatives.

legislative and executive powers in violation of the constitutional separation of powers doctrine.

The Founding Fathers thus clearly intended that the execution of the laws be constitutionally entrusted solely to the President. In accord with that constitutional intent, the courts have consistently reaffirmed the proposition that the authority to enforce the laws is an executive function.

In Springer v. Philippine Islands, 277 U.S. 189, 202 (1922), the Supreme Court, in a general discussion of the separation of powers principle, observed, "[l]egislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions.

Applying this principle, the Fifth Circuit in United States v. Cox, 342 F. 2d 167, cert. denied, 381 U.S. 935 (1965), ruled that the judiciary could not encroach upon the purely executive function of law enforcement. There, a federal grand jury returned an indictment for perjury against blacks who had testified in a civil rights case. The presiding judge directed the United States Attorney to sign the indictment. At the direction of the Attorney General, however, the United States Attorney refused to comply. Upon appeal, a contempt citation issued against the recalcitrant U. S. Attorney was reversed.

Sitting en banc, the Court of Appeals held that the Attorney General is the hand of the President in taking care that the laws of the United States, through the prosecution of offenses, are faithfully executed. Although recognizing that as a member of the bar, the attorney for the United States is an officer of the court, the court ruled that nevertheless he is "an executive official of the Government, and it is as an officer of the executive department that he exercises a discretion as to whether or not there shall be a prosecution in a particular case. It follows," said the court, that "as an incident of the constitutional separation of powers, . . . the courts are not to interfere with the free exercise of the discretionary powers of the attorneys of the United States in their control over criminal prosecutions." Judge Wisdom, concurring specially, noted: "The prosecution of offenses against the United States is an executive function within the exclusive prerogative of the Attorney General." 5/ He further observed that "the functions of prosecutor and judge are incompatible." 6/

5/ 342 F. 2d at 190.

6/ 342 F. 2d at 192.

The principle that the Executive alone has under the Constitution the duty and the power to enforce the laws through prosecution before the courts has been restated on many occasions.[7/]

District Judge Richey of the United States District Court for the District of Columbia denied an application for the appointment of an independent special prosecutor to investigate the Watergate incident. Judge Richey viewed such action as both an unwarranted interference with the prosecutorial discretion of the Executive and a violation of the doctrine of Separation of Powers.[8/]

7/ See, e.g., Ponzi v. Fessenden, 258 U.S. 254, 262 (1922); Weisberg v. Department of Justice, No. 71-1026, decided on rehearing en banc October 24, 1973 ("Functions in this area [prosecutorial discretion] belong to the Executive under the Constitution, Article II, Sections 1 and 3 . . . ."); Parker v. Kennedy, 212 F.Supp. 594, 595 (D.D.C. 1963) (Determinations whether prosecutions should be commenced are within the ambit of the Attorney General's executive discretionary power); Pugach v. Klein, 193 F.Supp. 630 (D.D.C. 1961) ("The prerogative of enforcing the criminal law was vested by the Constitution, not in the Courts, nor in private citizens, but squarely in the executive arm of the government.") See also Nader v. Kleindienst, Civ. No. 243-72 (D.D.C. 1973); and Moses V. Kennedy, 219 F.Supp. 762 (D.D.C. 1963).

8/ Findings of Fact and Order No. 7 at 2, O'Brien v. Finance Comm. to Re-elect the President, Civ. No. 1233-72 (D.D.C., decided Spet. 25, 1972).

B. Through an ultimate power of removal, the President is constitutionally entitled to control all officers performing purely executive duties.

When establishment of a Department of Foreign Affairs was under consideration in the First Congress, extensive debate was provoked by a provision purportedly granting the President the right to remove the Secretary of Foreign Affairs. Several Members of the House, led by James Madison, contended that the President alone had the constitutional power to remove executive officials and that Congress could not impinge upon that power. Ultimately, a bill was enacted which did not purport legislatively to "grant" the President the power to remove the Secretary of Foreign Affairs,[9/] on the theory that the President already possessed a constitutionally-conferred power of removal. In 1807 John Marshall eloquently summarized the debate over the "removal" clause. As Marshall put it, during the last stage of the discussion in the House of Representatives, Congressman Benson moved to amend the bill to establish a Department of Foreign Affairs--

> so as clearly to imply the power of removal to be solely in the President. He gave notice that, if he should succeed in this, he would move to strike out the words which had been the subject of debate. If those words continued, he said, the power of removal by the President might hereafter appear to be exercised by virtue of a legislative grant only,

9/ 1 Stat. 28, 29.

> and consequently to be subjected to legislative instability; when he was well satisfied in his own mind, that it was, by fair construction, fixed in the Constitution. The motion was seconded by Mr. Madison, and both amendments were adopted. As the bill passed into a law it has ever been considered as a full expression of the sense of the legislative on this important part of the American Constitution. 10/

The views of the First Congress are entitled to great weight in interpreting the Constitution because it was, in the words of Charles Warren, an "almost adjourned session" of the Federal Convention. 11/ The First Congress "contained sixteen members . . . fresh from the Convention, and a considerable number who had been members of the State Conventions which had adopted it . . . ." 12/ The Supreme Court has properly adhered to the view expressed by the First Congress that the President constitutionally may remove, and thereby control, all purely executive officers, notwithstanding any legislation to the contrary.

In Myers v. United States, 272 U.S. 52 (1926), a landmark case, the Supreme Court held that the President had the constitutional power to remove a postmaster of the first class, without

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10/ 5 J. Marshall, Life of George Washington, 231-232 (London, 1807).

11/ C. Warren, Congress, the Constitution, and the Supreme Court 99 (Boston, 1925).

12/ 3 Farrand 518.

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the advice and consent of the Senate as was required by statute. In concluding that under the Constitution the President has the exclusive power of removing executive officers of the United States whom he has appointed with the advice and consent of the Senate, the Court reasoned (at 163-164):

> "[A]rticle II grants to the President the executive power of the Government, i.e., the general administrative control of those executing the laws, including the power of appointment and removal of executive officers -- a conclusion confirmed by his obligation to take care that the laws be faithfully executed; . . . that the President's power of removal is further established as an incident to his specifically enumerated function of appointment by and with the advice of the Senate, but that such incident does not by implication extend to removals the Senate's power of checking appointments; and finally that to hold otherwise would make it impossible for the President, in case of political or other differences with the Senate or Congress, to take care that the laws be faithfully executed."

The Court suggested that the determination of whether Congress had the power to limit the President's normal unfettered right to remove an executive officer depended upon an analysis of how fundamental that officer's duties were to the functioning of the Executive branch (at 127):

> A reference of the whole power of removal to general legislation by Congress is quite out of keeping with the plan of government devised by the framers of the Constitution. It could never have been intended to leave to Congress unlimited discretion to vary fundamentally the operation of the great independent executive branch of government and thus most seriously to weaken it. It would be a delegation by the Convention to Congress of the function of defining the primary boundaries of another of the three great divisions of government.

Some of the broad language in Myers was limited by the Supreme Court's subsequent decision in Humphrey's Executor v. United States, 295 U.S. 602 (1935). There, a statute limiting the power of the President to remove members of the Federal Trade Commission for "cause" was challenged as unconstitutionally interfering with the executive power of the President. The members were appointed by and with the advice and consent of the Senate. Upholding the constitutionality of the challenged restriction on the President's removal power, the Court drew a distinction between "purely executive officers" and other officers for purposes of analyzing the President's constitutional removal power. Regarding "purely executive officers," including postmasters, the Court stated that the Myers decision established the constitutionality of the President's illimitable power of removal. (295 U.S. at 627-628):

> "The office of a postmaster is so essentially unlike the office now involved that the decision in the Myers case cannot be accepted as controlling our decision here. A postmaster is an executive officer restricted to the performance of executive functions. He is charged with no duty at all related to either the legislative or judicial power. The actual decision in the Myers case finds support in the theory that such an officer is merely one of the units in the executive department and, hence, inherently subject to the exclusive and illimitable power of removal by the Chief Executive, whose subordinate and aid he is . . . . [T]he necessary reach of the decision goes far enough to include all purely executive officers.

The Court observed that F.T.C. Commissioners exercised mainly quasi-legislative and quasi-judicial powers and that their executive powers were only incidental and necessary to the effectuation of their main powers. Accordingly, the Court concluded that those Commissioners were not "purely executive" and held that Congress could constitutionally place restrictions upon the President's power to remove them. 13/

The Myers and Humphrey's Executor cases therefore establish the proposition that the President's constitutional power to remove purely executive officers is absolute, at least when those officers are appointed by the President with the advice and consent of the Senate. 14/

13/ See also, Wiener v. United States, 357 U.S. 349 (1958) (War Claims Commission performs quasi-judicial functions and thus its members may be placed outside the President's power of removal).

14/ United States v. Perkins, 116 U.S. 483 (1885) does not suggest anything to the contrary. There a statute vested the appointment of cadet-engineers in the Secretary of the Navy, but another statute, section 1229 of the Revised Statutes, restricted his power of removal. Section 1229 was challenged as unconstitutional on the ground that it encroached upon the Secretary's removal power. In rejecting that contention, the Supreme Court concluded that when Congress vests the appointment of inferior officers in the heads of Departments under Art. II, § 2 of the Constitution, it may limit and restrict the power of removal as it deems best in the public interest. The Court did not reach the question of whether Congress could similarly restrict the President's power of removal, or whether the President himself could have removed cadet-engineers without limitation. In fact, in Blake v. United States, 103 U.S. 227 (1880), the Supreme Court held that notwithstanding section 1229, the President had the power to discharge a military officer by appointment of another in his place, by and with the advise

Footnote continued.

Conclusion

Conferring litigating authority upon the Federal Election Commission to enforce the Lobbying Act would raise very serious constitutional questions for two related reasons. First, it would combine legislative and executive authority in violation of separation of powers principles. Second, it would place the executive power to enforce the Lobbying Act in Commissioners beyond the President's absolute removal power. The Commission's power to enforce the Act would be primary and not merely incidental to the exercise of quasi-legislative or quasi-judicial powers.

14/ Footnote continued
and consent of the Senate. The Court observed that a constitutional question would be raised if the power of the President and Senate in this regard was subject to restriction by statute (103 U.S. at 236). Section 1229 was one of a series of statutes enacted by the Reconstruction Congress, culminating in the Tenure of Office Act, which was declared unconstitutional in Myers v. United States, 272 U.S. at 176.

Furthermore, whatever restrictions were placed upon the power of the Secretary of the Navy to remove cadet-engineers under section 1229, it is notable that they exercised no significant executive discretion comparable to that exercised by the Attorney General.

Department of Justice

Supplemental Information Requested by the Senate Subcommittee on Intergovernmental Relations Senate Government Operations Committee

on

June 12, 1975

Question:

1. Could you explain for the Committee how the Justice Department regulations regarding the recording of ex parte contacts now works and how they compare with the provisions of the pending bills?

Response:

On August 8, 1973, [then] Attorney General Elliot Richardson issued Order No. 532-73 providing for "Departmental Records of Outside Contacts." A copy of the Order, which is self-explanatory in terms of its procedures, is attached. Changes are contemplated, however, although none has yet been made. As he stated in his letter to you on April 7, 1975, the Attorney General will furnish a copy of any new directive to the Subcommittee should the present regulations be superseded.

The procedures established in Order No. 532-73 are more specific and well-defined than those proposed in Section 7 of S. 774. The Order's provisions differ from those contained in Section 7 of S. 774 in the following respects:

(1) The Order was promulgated by the Attorney General in response to specific needs for recording ex parte conversations in which Department of Justice attorneys or other employees are involved. The language in the Order attempts to balance the need for recording such contacts with the equally compelling needs for Department personnel to perform their duties in an efficient and expeditious manner. As such, the Order stipulates specific types of conversations which the employee should record by memorandum. The employee is given some discretion in determining whether a given conversation is of a sort which must be recorded, but he must be guided by the general principles spelled out in the Order. These principles and definitions recognize the unique nature of the Department's responsibilities. For example, an employee need only record contacts with "non-involved" parties, that is, those "with whom the employee would not in the routine handling of the case or matter normally have contact."

(2) In contrast to the Department Order, the provisions of Section 7 of S. 774 are so broad that they would seem to apply to virtually every conversation which a Federal employee, GS-15 or above, has concerning government affairs. Section 7 requires a record of any conversation in which the outside party is "expressing an opinion" regarding the "policymaking process" or which contains information relating to that process. Moreover, that section leaves the employee little discretion as to how a record is to be made of the conversation. The record must contain five specific types

of information about the conversation, in such form as the Federal Elections Commission shall specify. In our judgment, this requirement is needlessly specific and overly burdensome. We also believe it would apply in a totally inappropriate manner to certain legal matters which the Department handles.

Finally, Subsections 7(b) and(c) of S. 774, which contain requirements for maintaining and making availble the records of conversations required by § 7(a), are similarly inappropriate.

Question:

2. You are critical of the IRS disclaimer for tax-exempt organizations. Would you in turn support a reform of the Code which would permit the 501(c)(3) organizations to engage in lobbying?

Response:

It is the Department's view that we should oppose any legislation which does not permit the Government to "consider", and use, any information furnished under oath or affirmation and originally intended to be made public. We therefore do not think that Section 6 of S.774 and Section 7 of S. 815 represent wise policy. As to our position on permitting 501(c)(3) organizations to engage in lobbying, we defer to the Treasury Department.

Question:

3. Would you support the placement of enforcement authority in another independent,

Executive Branch commission which could investigate and be responsible for civil sanctions through a procedure similar to that used by the Federal Trade Commission?

Response:

The proposed creation of an independent Executive Branch commission to investigate violations of any new Lobbying Act is unnecessary. The general enforcement problems of the 1946 Act do not stem from a need to transfer investigative responsibility to yet another agency. Instead, they result primarily from a combination of judicial interpretations and loopholes in the present law, both of which appear to be cured by S. 815.

Question:

4. Could you explain the Justice Department reaction to the case of Thomas Bradley v. William Saxbe in which Judge Gesell declared that the League of Cities, Conference of Mayors and National Association of Counties are not required to register as lobbyists? Do you believe new legislation could be properly drawn to overcome the objections in that opinion?

Response:

Until the issuance of the Bradley decision last year, the Department had always viewed the "public official" exception to 2 U.S.C. 267 as applying only to those actually holding personal trusts and as based upon a congressional

desire not to interfere with the personal dialogue between such local officials and their Federal counterparts. Such a legislative intent would have been consistent with Constitutional concepts of Federalism. Judge Gesell's decision underscores the need to re-write the entire Lobbying Act. Future attempts to apply the Lobbying Act in its present form would surely result in decisions further limiting its coverage.

S. 815, as we have stated, largely closes the innumerable ambiguities and loopholes of the 1946 Act. The specific loophole articulated in Bradley can, I believe, be remedied simply by inserting into the legislative history of any new Act language indicating that the "public official" exception was not intended to apply to paid, professional, lobbying activities which are merely paid out of municipal funds. It would also be helpful to state therein that the Congress specifically intends to overturn the decision in Bradley v. Saxbe as it relates to otherwise-covered lobbying contacts conducted by persons other than Federal Government employees, elected state and local public officials, or personal staffs of the latter.

Chairman RIBICOFF. We welcome our colleague Dick Clark, who has a statement to make.

TESTIMONY OF HON. DICK CLARK, A U.S. SENATOR FOR THE STATE OF IOWA

Senator CLARK. Thank you very much, Mr. Chairman.

My statement is brief. I appreciate the opportunity to testify before the Committee on Government Operations this morning in support of our efforts to open the lobbying process to full public view.

On February 24, I joined with you, the ranking minority Member, Senator Percy, and with Senators Brock, Stafford, and Kennedy in introducing S. 815, the Open Government Act of 1975. Like you, I strongly believe that the committee should move forward with this legislation as soon as possible.

Watergate is behind us, but the effects remain. The events of the last 3 years have made the American people aware of the dangers of Government secrecy as never before.

Fortunately, Congress has not been blind to the distrust and apathy bred by closed-door Government. Last year's election reform bill tightened the already strict requirements for disclosure of campaign contributions and expenditures. In 1973, the House of Representatives voted to open its committee meetings, and I hope that the Senate will soon follow suit.

This week, as I understand it, your committee has been marking Senator Chiles' "Government in the Sunshine Bill," which will open up not only congressional committee meetings, but those of the executive branch agencies as well.

On a number of occasions the Senate has passed legislation to require personal financial disclosure by Members of Congress and Government employees. With the changing complexion of the House, it may not be long before such legislation becomes law.

Progress has been made toward ending government secrecy in just about every way imaginable. Except one, one which Common Cause Chairman John Gardner has listed as among "the most secretive and potentially corrupting ingredients in American politics"—lobbying.

Congress has done nothing about lobbying since the Regulation of Lobbying Act of 1946. If that legislation had any value when it was enacted, it has little now. The act's deficiencies are almost too numerous to mention. By covering only those individuals whose principal purpose is lobbying, its provisions fail to reach many people and organizations who devote much time, money, and effort to influencing government actions. By referring only to lobbying aimed at Congress, it ignores the extensive lobbying campaigns aimed at the executive branch. By failing to provide adequate enforcement, the law almost encourages its own violation.

Even the title is unfortunate: the Regulation of Lobbying Act. Lobbying is not something to regulate—it is a basic constitutional right, guaranteed by the first amendment; the right to "petition the Government for a redress of grievances."

The Regulation of Lobbying Act is antiquated and ineffective. We should tear it up and throw it away, as many of Washington's biggest lobbyists did years ago.

In its place, Mr. Chairman, Congress must now enact a comprehensive measure designed to insure complete disclosure of lobbying activities aimed at the Federal Government. Both the Open Government Act, S. 815, and the legislation introduced by Senator Percy and yourself, S. 774, contain the four elements essential to any meaningful lobby reform:

First: The bills would apply to lobbying of the executive branch, not just Congress.

Second: The bills would cover all persons and groups which lobby to a significant degree, as measured by personal compensation, expenditures, or repeated oral communication. They would also cover so-called grassroots lobbying efforts, like those based on mass-mailing campaigns.

Third: The bills would require extensive disclosure of lobbyists' sources and amounts of income, their expenditures, and a complete accounting of their lobbying activities, including gifts or favors rendered to public officials.

Fourth: The bills would establish tough enforcement procedures, including civil enforcement powers, under the auspices of the Federal Elections Commission.

Mr. Chairman, I was involved in the passage of last year's campaign reform bill, as many Members of the Senate were. I am confident that the Federal Election Commission can provide the kind of strict enforcement of lobbying statutes that is so desperately needed.

Under present law, enforcement is left up to the Secretary of the Senate and the Clerk of the House. But it is too much to ask congressional employees to enforce this type of legislation. It does not generate public confidence.

I also want to endorse S. 774's requirement for logging outside contacts by executive branch policymakers. Senator Kennedy's bill, S. 1289, which we have both cosponsored, also contains logging provisions.

Mr. Chairman, there is a long way to go to restore the American people's trust and confidence in their Federal Government. Passage of comprehensive lobbying disclosure would be another major step toward that goal, and it must be set among our highest legislative priorities.

Under your leadership, Mr. Chairman, I am confident that this major step will be taken soon, and the sooner the better.

If there is no objection, I would ask that an excellent editorial from the Des Moines Tribune, entitled "Regulation Lobbyists," appear in the hearing record at the conclusion of my remarks.

Again, Mr. Chairman, thank you for this opportunity to testify.

Chairman RIBICOFF. It will be inserted.

[The material referred to above follows:]

REGULATING LOBBYISTS

The Senate Committee on Government Operations has begun hearings on proposed reforms in the federal lobbying law. The investigation has been spurred by Common Cause, the self-styled citizen lobby, and by the General Accounting Office, which studied the present Federal Regulation of Lobbying Act and found it "ineffective."

This act required a person or organization employed by someone else for the principal purpose of lobbying to register and file quarterly spending reports

with the secretary of the Senate or the clerk of the House. A 1954 Supreme Court decision made this loose law even looser. The court ruled that the law applied only to groups or individuals collecting money for the principal purpose of influencing legislation through direct contact with members of Congress.

This interpretation left a number of loopholes. Persons or groups spending money out of their own pockets without hiring others were not covered by the law. Nor were those whose lobbying might have been extensive but did not represent their sole activity or "principal purpose." "Direct contact" with congressmen excluded those engaged in generating constituent mail (so-called "grass-roots lobbying"). Those lobbyists who dealt with members of the executive branch and the administrative agencies were similarly excluded.

Finally, the court left standing the law's compliance provisions leaving it to lobbyists to determine what expenditures should be reported. No government office is designated to check their reports.

Some estimates place the number of Washington lobbyists at 5,000, but only 2,000 bothered to register and file spending reports last year. The majority of those were late and incomplete. The total amount reported spent in 1974 was $10 million, a figure most observers think is less than half the real amount.

Nine bills have been introduced in Congress to close some of the registering and reporting loopholes. The bill introduced by Senator Charles Percy and Representative Thomas Railsback, both Illinois Republicans, also seeks to broaden regulations to include contacts between lobbyists and executive branch officials (both sides would have to maintain logs of telephone calls and office visits) an to strengthen enforcement procedures.

Lobbyists say this legislation will discourage the flow of ideas between businessmen or interest groups and the government, and will tie them down to elaborate filing procedures. Some are afraid their non-profit organizations will lose their tax-exempt status (as did the environmentalist group, the Sierra Club, in 1966 when the Internal Revenue Service ruled that one of its regular functions is lobbying).

Watergate has demonstrated the need to curtail influence-peddling in Washington. Some of the questions raised by the Vesco, ITT, milk producers and Howard Hughes cases might have been answered if the lobbying law had included contacts with the executive branch. The current reformers do not seek to limit lobbying expenditures, but to open these transactions to public scrutiny. The public deserves to know how and for whose benefit certain legislation is enacted.

Chairman RIBICOFF. Are there any questions?

Senator METCALF. No.

Chairman RIBICOFF. Thank you, Richard very much.

Senator CLARK. Thank you.

Mr. Godown.

TESTIMONY OF RICHARD D. GODOWN, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF MANUFACTURERS

Chairman RIBICOFF. Mr. Godown, you may be seated. I apologize for having to leave, but I have to go to the floor to manage the consumer advocacy bill. My colleagues will be here to listen to your testimony. I have read it. We are very anxious to get your points of view.

Mr. GODOWN. Thank you very much, Mr. Chairman.

Chairman RIBICOFF. I hope you understand why I cannot be here for the rest of the hearing.

Mr. GODOWN. Yes, sir.

Chairman RIBICOFF. Thank you, Senator Metcalf, for chairing.

Senator METCALF [presiding]. We are delighted to have you, Mr. Godown.

Mr. GODOWN. Thank you very much, Senator Metcalf.

I would like to proceed by giving a shortened version of my statement. I will just read several major parts of it. I would appreciate it, of course, if the whole statement could be entered into the record.

Senator METCALF. It will be incorporated in the record in full as read at the end of your testimony.

Senator METCALF. Go ahead.

Mr. GODOWN. Thank you.

For the record, I am Richard D. Godown. I am senior vice president and general counsel of the National Association of Manufacturers.

I am accompanied today by Stephanie Richmond, who is assistant general counsel for NAM.

We are a voluntary membership organization composed of 13,000 corporations—large, medium, and small. NAM is registered under the Federal Regulation of Lobbying Act of 1946 and would be covered by both S. 774 and S. 815, as would a great many of our member corporations.

We view the legislation proposed with the utmost seriousness and are pleased at the opportunity to appear and give testimony on this matter of singular importance.

We will discuss each major provision proposed in due course, but will begin with a general discussion of the philosophy and intent of these bills, and we will touch upon what we feel are their shortcomings.

To begin with, NAM favors public disclosure of the identity and financial interests of those engaged in lobbying. We happen to feel that lobbying is an honorable profession which would greatly benefit from a change in nonenclature. Shorn of its evil connotations, earned for it by only a very few, to lobby means to ask that your point of view be accepted and acted upon. Asked boldly, and unsupported by evidence, such a request ought to be turned down, and almost always is. But supported by information well organized and cogently put—information which details facts and figures, which spells out the impact of proposed legislation on the lobbyist or those he works for, is extremely useful to the legislator.

The number and complexity of the issues on which a Member of the Senate or House of Representatives is asked to pass judgment in the course of a single session of Congress boggles the mind.

Without written and oral communication, without the immense research and fact gathering performed free by individuals, corporations, and organizations, we feel the job of legislating would become hopelessly ensnarled. There is an increasing need for more information and more communication for Congress, not less. We firmly believe that these two measures could chill such communication.

NAM agrees that the existing law is badly in need of overhaul. As a practical guide to behavior, it is useless. There is great uncertainty about how to determine one's principal purpose, and even the language of Chief Justice Warren in *U.S.* v. *Harriss*, 347 U.S. 612, is vague and uncertain in its reference to stimulated letter campaigns under the 1946 Lobbying Act.

We feel very strongly that the present uncertainty should not be replaced by further ambiguity. We suggest that a substantial purpose

is no easier to define than a principal purpose except that the former is purportedly less than the latter. We do not know what is meant by the phrase "to influence the policymaking process."

It is true that eight oral communications are easy to count, but would this include innocent inquiries of relatively minor officials concerning purely ministerial tasks? These are some of the problems involved in the bill.

NAM will support a definition of lobbying which confines this activity to direct communication with Members of Congress, asking for their vote. This obviates the necessity of defining what it means to influence a board concept open to varying interpretation and impossible to define, we think, with the kind of precision required under our Constitution where criminal law is concerned.

This definition deletes communications with congressional staff employees, and with members of the executive branch of Government.

We are not surprised at, but are suspicious of, the exemptions written into this proposed legislation by virtue of which voluntary membership organizations whose annual dues do not exceed $100 per person are spared certain reporting and recording requirements, and those who do not require payment of dues as a condition of membership, as we read the bill, would conceivably escape coverage altogether.

We are incredulous at the proposal that all executive branch employes, GS–15 and above, should log, in great detail, every phone call and every letter and telegram expressing an opinion or containing information with respect to the policymaking process.

I will go now to a discussion of the subject of vagueness and will quote from *Connally* v. *General Construction Co.* The U.S. Supreme Court says:

> That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well recognized requirement, consonant alike with ordinary notices of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess and differ as to its application violates the first essential of due process of law.

Within the definition of lobbying, there is a fatally indefinite phrase: "in order to influence the policymaking process." And within the definition of policymaking process there are the vague words "any action taken." We believe that men and women of common intelligence will indeed guess and differ as to the application of these terms.

Also, in S. 815 there is a substantial-purpose test. In our view the word "substantial" suffers from the shortcomings as have been found to exist in the word "principal" in the existing law.

S. 815 would require the reports submitted by the lobbyists to include the identification of subject matter of each oral or written communication which expresses an opinion or contains information with respect to the policymaking process, a scope much broader than communications made in order to influence.

This provision goes beyond what, in any circumstance, could be considered necessary by requiring many nonlobbying-related state-

ments and communications to be reported, and it would not justify the huge burden that it would create.

By providing unnecessary as well as burdensome provisions, these bills, we believe, have gone off course. That, of course, was to provide an effective aid toward better evaluation of lobbying activity; instead we think they bury essential information beneath the sea of unnecessary data.

I turn now to a discussion of the right to petition, and I believe that it would be abridged by these two bills.

Among the indispensable democratic freedoms guaranteed by the first amendment are——

Senator METCALF. Or the 4th or the 14th.

Mr. GODOWN. Sir?

Senator METCALF. Or the 4th or the 14th amendment.

Mr. GODOWN. Or the 4th or the 14th, Senator, I stand corrected.

Among the indispensable democratic freedoms guaranteed by the 1st amendment, the 4th amendment, and the 14th amendment are the rights of the people to assemble and to petition the Government for redress of grievances.

The Supreme Court has stated that the very idea of government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to government affairs, and to petition for a redress of grievances. That is a famous old case of the *United States* v. *Cruikshank*.

Not only would the first amendment prohibit legislation banning such activity, but it would also forbid legislation that is so vague or overbroad that it would result in a chilling effect upon the exercise of these rights.

NAM contends that the legislative proposals before us suffer from the defects of vagueness and overbreadth, and if enacted, we feel that they will exert a definite chilling effect upon those seeking to exercise their rights to petition.

Senator CHILES. You would agree, though, would you not, that the same articles of due process certainly give to the general public the right to also know what influence is exerted upon the Congress in its attempt to legislate the law which is going to govern them. Would that not also certainly be a part of the due process?

Mr. GODOWN. I would agree with the Senator. Most definitely the public does have a right to know.

One of the lobbyist definitions under both S. 774 and S. 815 defines lobbyist to be one who lobbies, and spends $250 for lobbying during a quarterly filing period.

Lobbying has been defined as a communication, or the solicitation or the employment of another to make a communication, with a Federal officer or employee in order to influence the policymaking process.

These terms, in our view, are so overbroad as to include individuals seeking only to exercise their rights as citizens, under the 1st amendment, and the 4th, and the 14th, to petition the government for a redress of grievances.

We think the bills are incomplete in that they leave out important lobbyists. The bills include communications or solicitations by a Federal officer or employee, or by an officer or employee of a State or local government acting in his official capacity.

We feel that certainly the public is entitled to know all the directions from which pressures are exerted, instead of only certain selected ones, especially since a key lobbying force comes from within the cloakrooms, and the staff cafeterias.

We feel the Pentagon is a powerful source of lobbying, which would also be left untouched by this proposal.

NAM believes lobbying legislation should treat equally all who are engaged in lobbying, and it should not improperly assume that certain segments are above reproach or scrutiny.

We believe that the two bills, S. 774 and S. 815 could create a restraint on freedom of speech. We believe that the establishment of elaborate and detailed registration, reportmaking, and recordkeeping requirements such as those proposed in S. 774 and S. 815 will inevitably inhibit in some measure the exchange of much valuable information.

We fear that the institution of such a registration and reporting procedure could, in fact, create an effective restraint on the rights of individuals to exercise their first amendment freedoms.

For example, these bills could compel one, other than a candidate for office, to register as a condition of making a speech, if one purpose of the speech is to solicit other to make communications with Federal officers or employees in order to influence the policymaking process.

In this regard, it would be well to bear in mind the case of *Thomas* v. *Collins*, 323 U.S. 516 (1945), where a labor union representative was prosecuted for delivering a speech before first having registered as a union organizer.

The Supreme Court held that it was impermissible to require registration as a condition precedent to the exercise of freedom of speech.

We think that the membership disclosure provisions, which are contained in these two bills, violate the first amendment guarantees of the freedom of association.

Senator METCALF. Do you object to disclosing to the committee the names of your members?

Mr. GODOWN. No, sir; the names of our members is not a problem. The amount of contributions which member companies make to our organization, we think, is a matter held in confidence.

Senator METCALF. You do not think that every time you, or another organization such as the chamber of commerce, or the AFL–CIO, are asked by Congress, "Who are your members?" they should supply us the names of their membership?

Mr. GODOWN. Senator, I have difficulty with the proposition, because the purpose to which the lists of the membership might be put are certainly questionable.

Now, I am not—no offense please—but if our membership list becomes a matter of public information, and there is no guarantee that every——

Senator METCALF. If it is for a report in a hearing?

Mr. GODOWN. Yes, sir. There is no guarantee that the membership list then does not become used by anybody who has access to the report to solicit them for whatever purpose, either to try to sell them magazines, and solicit their contributions to other causes, or whatever.

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We feel that the—as the court has held in the NAACP cases, which I will get to in a moment, that they have a right to associate with us and us with them. This should be held as a matter of confidence.

Senator METCALF. Yesterday we had before us representatives from the U.S. Chamber of Commerce.

I have a Jack Anderson column. Believe me I am not stating that is true. It is just an allegation. Jack Anderson says that the U.S. Chamber of Commerce loans its computerized address lists out to people for lobbying activities. Why should we not have access to the same lists then?

Mr. GODOWN. Senator, with due respect, I really cannot comment on this particular operation by the U.S. Chamber of Commerce.

Senator METCALF. Does the National Association of Manufacturers let its membership lists be used for lobbying activities?

Mr. GODOWN. By people other than NAM?

Senator METCALF. Yes.

Mr. GODOWN. No; we do not.

Senator METCALF. So you do not let State organizations, or any organization, who are trying to promote the same activities that you support, use your membership list?

Mr. GODOWN. If the Senator will permit a caveat, and I was about to offer it as you began your next question—affiliated with the NAM is the National Industrial Council which is made up of three separate groups, all separately organized and independently incorporated. There are three groups: the industrial relations group; groups of State manufacturing associations, there are some 32 of those; and then there is the trade associations group. So that we communicate with each other, if you will. We tell them what our legislative objectives are and what our administrative objectives are. They share certain information with us.

Insofar as—there may be certain circumstances in which portions of the NAM membership may be disclosed to these people, in fact, who are affiliated with us, employees of NIC or NAM employees.

I answered you correctly, but I am pleased that we got the opportunity to spread the whole answer on the record.

Senator METCALF. Therefore, if there are areas in which NAM was concerned, and some of these other groups were also concerned, you would make available your membership list and those people would say look, write your Senators, or write your Congressmen about this bill. Is that right?

Mr. GODOWN. I must confess to some ignorance about the specifics of the use of the membership list within the organization.

Senator, I think an honest answer is that that is conceivable through the NIC organization.

If I say just one word further, ordinarily, NAM is at great pains to contact its membership within the varying jurisdictions to communicate with them concerning the presence of a legislative issue which may be of interest to them, and to encourage them to exercise their first amendment rights, and to be in contact with their Senators and their Congressmen.

Senator METCALF. I am not quarreling about that. I am just asking you about the way in which you use your membership list.

I agree with Senator Chiles that the people of America are certainly concerned about due process. But due process also includes information as to how people are lobbying against some of the bills that the people of America support.

Mr. Godown. May I amplify this?

Senator Metcalf. Please. This is what this hearing is about.

Mr. Godown. Yes, sir. If that be lobbying, then we feel that that is lobbying in the best sense of the word, that is, we conceive the purpose of NAM as an organization to act as a watchdog in Washington to report on legislative and administrative developments; to do synopses, or whatever, of the bills to point out the important issues, and to communicate that to the people who pay our dues. That is one of the reasons we are in existence, because of communication. If it stopped there, and if our membership did not, in fact, take action, that is, if they were not moved to communicate with their Senator or their Congressmen if, in fact, they happen to agree with us, then we think that the cause is lost.

We think, with all due respect, sir, that you and the total Members of the Senate, and the House of Representatives, need to hear as frequently as possible, in their own words, from your constituents, concerning matters which are of dire concern to them. We try to act as an agent to point out what, in fact, we think are matters of concern to them. Sometimes they agree and sometimes they do not.

Thank you for the opportunity to put that on the record.

Senator Chiles. As you know, the "principal purpose" term is now a major loophole in the law as a result of the case. You suggested that the term "substantial purpose" is equally ambiguous. Can you assess a meaningful definition of lobbying activities that would not be so ambiguous?

Mr. Godown. Senator, I happen to have one.

We believe that a definition of lobbying, which is understandable and simple, might encompass direct communication, that is, including all methods of direct address to Members of Congress when the purpose is to promote, effectuate, delay or prevent introduction, consideration, amendment, passage, approval, adoption, enactment or defeat of legislation.

Senator Chiles. By direct, would you include mail?

Mr. Godown. Yes, sir.

Senator Chiles. Why would you limit that direct to the Congressman himself? Your knowledge of how we function around here—certainly you know the staff in many instances become more important than a lot of us junior Senators and junior Congressmen. We recognize very definitely that staff belonging to certain Members are much more important than we are. So we have to deal with them. So certainly we know that the outsiders are dealing with them. They have tremendous influence upon how legislation is going to be affected. So why would you leave that to the Congressmen themselves?

Mr. Godown. Well, to begin with, Senator, I think primarily because they do not actually have a vote. They cannot go on the floor and cast a vote, which is rather obvious.

Then No. 2, our entire effort in testifying is to attempt to indicate ways in which the proposals captured in these two bills can be win-

nowed down so that they are reasonable and able to be handled so that they do not exert a burden.

Having to be concerned with lobbying as it pertains only to Members of Congress, people who can cast a vote, is a finite thing. You know—depending on what your definition of lobbying is—you know whether or not you have done that, asking for a vote, so to speak, as I have suggested in my statement proper.

I would be willing to agree that if the definition of what constitutes lobbying is properly composed, then we would probably have no serious or longstanding objection to also including direct members of Congressmen and Senator's staff. I suppose to be rational about it, we would also have to agree that the committee staff would be included if, in fact, we are engaged in lobbying with them.

Senator CHILES. I just do not think you really are going to have any meaningful kind of change unless you include, that no matter how perfect your definition was to the Congressmen themselves, if you did not include those activities that were set up to influence the staff of the Congress.

The ultimate purpose, of course, of this proposed legislation is to try to tell Congress and the public more about the efforts that are being made to influence the important governmental decisions. I think you all agree that this is a desirable goal from your statement.

Mr. GODOWN. Yes, sir.

Senator CHILES. Would you object telling the public more about NAM's activities and the way that you are actually spending your money to influence legislation?

Mr. GODOWN. No, sir. We are, in fact, registered under the 1946 act. We report our quarterly activities, the amount of dollars we spend, and the direction in which we spent it. We are present on record, in accordance with the law as it now stands.

Senator CHILES. What records would you be required to keep under these proposed bills that you are not keeping now?

Mr. GODOWN. To begin with, Senator, a major portion of recordkeeping would be involved because the executive branch would be covered.

Senator CHILES. All right. Aside from the executive branch and the legislative, what additional records do you think you would have to keep? I think this would be helpful to the committee in seeing whether we have practical legislation or not.

Mr. GODOWN. I am glad to respond, Senator, the difficulty is with the overly broad definition of what constitutes lobbying, and the policymaking process. The words any activity or any action of the legislative branch, and any other action in Congress, or other actions in the executive branch are contained within the definitions of section 3(b) of S. 815.

I really have no way of directly answering your question, sir.

Senator CHILES. How would that affect your recordkeeping? That is broadening out the activities. It would probably bring more people into the net who would have to keep some records to start with. But you are already keeping records and you are already reporting under the act.

I am just trying to find out what additional records would you have to keep, what additional problems or expenses, or anything else that would be put on you by virtue of these bills.

Mr. GODOWN. It is a question of volume for the most part, Senator. If, in fact, you had to keep records every time you made a contact by telephone, or by writing, concerning any proposed bill, resolution, amendment, nomination, investigation, adjudication, or other action, I would think that the list would go on interminably.

I hear the same kind of testimony from people here representing the Government, as you hear from me representing the private sector, we are in contact with each other, and justifiably so on a great number of occasions. To have to stop and record each one—innocent communications, communications which are for the purpose of just exchanging information, we think would be an enormously inhibiting factor.

Then being a lobbyist carries with it a stigma in the minds of many people, perhaps like Jack Anderson, who have been referred to earlier in the hearing.

Senator CHILES. That is all of the questions I have, Mr. Chairman.

Senator METCALF. Mr. Godown, the lobbyist does not carry a stigma as far as this Senator is concerned. I use members of my staff to get information. I do not jump every time that the National Association of Manufacturers, or the U.S. Chamber of Commerce hollers, but I do not hesitate to ask any of you for information that I think you could supply to me.

Nevertheless, I am concerned about this. The U.S. Chamber of Commerce spent $285 in the last quarter on lobbying activities.

According to NAM's reports to Congress, you spent $1,800 for lobbying. Again, I do not want to suggest that you people have violated the law. I think you have complied with the law. But I want to ask you this: do you feel that your lobbying activities have only resulted in expenditures of $1,800 over the last fiscal year?

Mr. GODOWN. Absolutely, Senator. The position as reported is exactly as it happened.

May I say this? The report which you have handed me pertains to the expenditures of individuals who are NAM employees and who are registered as lobbyists for the organization. It is now a fact that NAM is an organization that is registered. We would intend to spend considerably more than that on lobbying.

We are, right now, personally engaged in attempting to comply with the current law, and to report as required.

I may say for the record we have indicated an estimate of expenditures on the part of the organization of something in the neighborhood of $20,000 for the second quarter of 1975. That translates to $80,000 or $100,000, I suppose for a year depending on what our activities are.

May I also say, Senator, that the reason that NAM is now registered, and that came about on May 1, 1975, is because we have transferred our headquarters from New York City to Washington. We have expanded our governmental relations staff. We have taken on people whom we call public affairs directors who are now in our field offices. We have a program which is now in existence, which to-

gether with our ongoing activities, we feel probably, or at least possibly, bring us within the ambit of the law concerning what we intend to do beginning in the second quarter for 1975, and thereafter. Up until that time, in our judgment—and in my judgment as general counsel of that organization—we did not come within the ambit of the existing 1946 act.

We intend to do more lobbying. We have complied with the law which says that you must first register and then lobby, if the principal purpose of the organization is to directly influence legislation. Here I have paraphrased from the *Harriss* case.

Senator METCALF. I am not quarreling with you.

Mr. GODOWN. No, sir. I appreciate the opportunity of putting that on the record.

Senator METCALF. The only objection I raise is that you tell me that you probably will spend $20,000 in some quarter, and under the law you only have to report $1,800. Do you not think that we should amend that law so that we have an accurate reporting requirement?

Mr. GODOWN. Senator, yes I agree that the law should be amended so that there is an accurate reporting requirement. Again, for the record, NAM did not spend $20,000 as an organization for direct lobbying purposes. We have estimated that we expect to spend that much in the second quarter of 1975.

Senator METCALF. I hope you are not lobbying against the strip mining bill. That is a parenthetical comment and you do not have to answer it.

Mr. GODOWN. We believe the strip mining bill is—I am happy for the opportunity to speak on this. The strip mining bill contains many provisions which will be difficult for those engaged in strip mining to comply with.

Senator METCALF. You are breaking my heart.

Mr. GODOWN. We wonder if we can afford to go without coal since the country is in an energy crisis. But I would not want to lobby you, Senator.

Senator METCALF. You are not lobbying me because it does not work either way.

Nevertheless, $285 is reasonable. I think it completely complies with the law as far as the U.S. Chamber of Commerce is concerned. Your report of $1,800 for lobbying activities for the whole year, which also complies with the law, it seems to me that is something wrong and we should amend the law so that we have factual reporting. Would you not agree with me that we should do that?

Mr. GODOWN. Yes, sir. I agree that the law needs amending. As I stated in my prepared text, the 1946 regulation of the Lobbying Act is useless as a guide. It is extremely difficult to attempt to comply with. As counsel, I have to make serious judgments for me and for my people concerning what constitutes direct communication and what constitutes the principal purpose. Is the principal purpose 51 percent? If a person is engaged to practice lobbying, and he does it for 49 percent of his annual time—his annual work year—and does not do it for 51 percent, is he, in fact, a person whose principal purpose is not to engage in lobbying?

I literally do not know the answer. It is possible, of course, to interpret the *United States* v. *Harriss* decision by Chief Justice War-

ren in that fashion. We have not done that. We are leaning over backwards in an attempt to comply with the law.

Senator METCALF. I do not know what it means either. I think we can all get together and try to find a way to have the people informed, as Senator Chiles suggests, and at the same time, have honest reporting.

Believe me, I am not criticizing anybody who reports in accordance with the law, as long as it is honest reporting, because we have written a bad definition in the legislation.

Mr. GODOWN. I quite agree with you, Senator.

I wonder whether I might go forward and suggest, just very briefly, what I think the elements of a good and enforceable Lobbying Act might be, if I could do that in one minute.

Senator METCALF. I would be glad for you to do that for us.

Mr. GODOWN. Thank you very much. I have already suggested, Senator, what I think should be the definition of lobbying. I will not read it again because it is in the record, but it does refer to only direct communication with Members of Congress.

We believe that a person should register if, in fact, he engages in lobbying and reports each area of legislative activity, not each area on each specific bill, not every action as the current proposal would seem to call for.

We believe that an individual should be called upon to report the income he receives for lobbying. That he should be given an opportunity to list that portion of his income which is for lobbying or list his total income and state an allocation of how much is for lobbying, if he prefers.

We believe that there are two exemptions—or actually four exemptions which are crucial. We believe that an individual or a company, acting on their own behalf, should not be considered to be a lobbyist, should not have to register and to report.

We believe that inquiries concerning the existance of status, purpose or effect of legislation, that would be translated into an inquiry for information; we do not think that that should be a covered communication or an activity which is held to be lobbying.

We do not believe that lobbying should cover communications at the request of Congress, or a congressional committee, or at the request of the staff, nor do we believe that the appearance before Congress, or written statements, should constitute lobbying and therefore, give rise to registration and reporting requirements.

We will note for the record, that the last two I mentioned are in these bills.

Senator METCALF. From time to time I have some questions and your organization has the answers, so I write to you——

Mr. GODOWN. I get some of your letters, Senator.

Senator METCALF. And, you respond. If this bill passes, I am going to get a letter from your general counsel and say, "Dear Senator, under the provisions of the Lobbying Act, we cannot give you answers to those questions." Is this right?

Mr. GODOWN. Senator, I would hope that that circumstance never comes about. We would try our best always to answer your questions and to be of help in whatever way we can. We feel that is our responsibility to the NAM membership, and indeed to the public.

Senator METCALF. I want to say, and to the other lobbyists, that I have never had a response that was not honest and straightforward for something which I had to rely on.

As I say, as a Member of Congress, I do not know how I would have survived in this very competitive position that I am in, if I did not have an opportunity to call on all of you to give me information.

Mr. GODOWN. Thank you very much, Senator. I must say, we take our responsibilities very seriously in Washington. We believe that we can best serve the member companies of NAM and the business community, from whom our support comes, by remaining aware of legislation proposals which we think are either in their favor or will be against their interest by providing text and/or synopses—they are very busy running companies and do not always have time to read the lengthy bills, reports, et cetera.

We believe that it is encumbent upon us to urge them, in their own words and in their own way, to make their voice and their opinion known.

We are against, as anyone else, if people use form letters. We sort of laugh at that, the way you do. We have never urged—to my knowledge—we have never urged anyone to do that and will not ever, if I have anything to do with it. We do think that businessmen miss a great opportunity, which is essential to them, and to the well-being of their corporation, if you will, and more broadly to the country, if they do not express their views.

Our concern is the overall chilling effect which we see as a result of the two bills before us, S. 815 and S. 774. We have a feeling that a great deal of communication which—and thank you, in your own words, you have indicated is helpful—we have a feeling that a great deal of that communication will be cut off. We think that is bad. We would like to work with the committee to get a reasonable bill.

Senator METCALF. Thank you very much for your appearance here and thank you for your testimony. I thank you personally for the help you have given me over the years. Your prepared statement will be placed in the record at this point.

[The statement follows:]

Prepared Statement of Mr. Richard D. Godown

My name is Richard D. Godown. I am Senior Vice President and General Counsel of the National Association of Manufacturers. NAM is a voluntary membership organization composed of 13,000 corporations--large, medium and small. NAM is registered under the Federal Regulation of Lobbying Act of 1946 and would be covered by both S. 774 and S. 815, as would a great many of our member corporations.

We view the legislation proposed with the utmost seriousness and are pleased at the opportunity to appear and testify on this matter of singular importance.

We will discuss each major provision proposed in due course, but will begin with a general discussion of the philosophy and intent of these bills, and we shall touch upon their shortcomings.

General Commentary

NAM favors public disclosure of the identity and financial interests of those engaged in lobbying. Lobbying is an honorable profession which would greatly benefit from a change in nomenclature. Shorn of its evil connotations, earned for it by only a very few, to lobby means to ask that your point of view be accepted and acted upon. Asked boldly, and unsupported by evidence, such a request ought to be turned down, and almost always is. But supported by information well organized and cogently put--information which details facts and figures, which

spells out the impact of proposed legislation on the lobbyist or those he works for, is extremely useful to the legislator. The number and complexity of the issues on which a member of the Senate or House of Representatives is asked to pass judgment in the course of a single session of Congress boggles the mind. Without written and oral communication, without the immense research and fact gathering performed free by individuals, corporations and organizations, the job of legislating would become hopelessly ensnarled. The impact of bills could only be guessed at, and it would become evident only too soon that election to federal office does not endow the officeholder with omnipotence. Hence, there is an increasing need for more communication with Congress, not less. We firmly believe that these two measures could chill such communication.

NAM agrees that the existing law is badly in need of overhaul. As a practical guide to behavior, it is useless. There is great uncertainty about how to determine one's "principal purpose," and even the language of Chief Justice Warren in U. S. v. Harris (347 U. S. 612) is vague and uncertain in its reference to "stimulated letter campaigns" under the 1946 Lobbying Act.

We feel very strongly that the present uncertainty should not be replaced by further ambiguity. We suggest that a "substantial" purpose is no easier to define than a principal purpose except that the former is purportedly less than the latter. We do not know what is meant by the phrase "to influence the policy-making process." It is true that eight oral communications are easy to count, but would this include innocent inquiries of relatively minor officials concerning purely ministerial tasks?

NAM will support a definition of lobbying which confines this activity to direct communication with members of Congress, asking for their vote. This

obviates the necessity of defining what it means "to influence," a broad concept open to varying interpretation and impossible to define with the kind of precision required under our Constitution where criminal law is concerned. It also deletes communications with Congressional staff employees, and with members of the Executive branch of government.

We are not surprised at, but are suspicious of, the exemptions written into this proposed legislation by virtue of which voluntary membership organizations whose annual dues do not exceed $100 per person are spared certain reporting and recording requirements, and those who do not require payment of dues as a condition of membership escape coverage altogether. We also believe no true picture of "lobbying" per se can be constructed if employees of the Federal Government, as well as state and local officials, who lobby do not register and report. Surely these voices constitute very persuasive elements in Washington.

We are incredulous at the proposal that all Executive branch employees, GS-15 and above, should log, in great detail, every phone call and every letter and telegram expressing an opinion or containing information with respect to "the policymaking process." We can think of no single act which would more isolate the people from their government. It smacks very much of "Big Brother" and is decidedly Orwellian in concept. It would bring about 1984 in 1975.

We do not believe that lobbyists "stalk the halls of Congress and the Executive branch with their bankrolls and identities undetected." We do believe, however, that honest effort and sound judgment are required to frame a piece of legislation which is constitutional, easy to understand, simple to administer, not burdensome to government or the public, and which does not place a chill on communication between the people and their elected representatives. We would like to help in this effort. Our specific comments follow:

S.774 AND S.815 SUFFER FROM PROBLEMS OF VAGUENESS

It is our contention that there are a number of key terms in S.774 and S.815 which are too vague to satisfy the constitutional requirements of due process.

It has been stated:

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notices of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess and differ as to its application violates the first essential of due process of law. 1/

And criminal statutes restricting First Amendment freedoms must comply with stricter requirements of definiteness than other statutes. 2/

It is our view that within the definition of lobbying, there is a fatally indefinite phrase: "in order to influence the policymaking process." And within the definition of "policymaking process" there are the vague words "any action taken". We believe that men and women of common intelligence will indeed guess and differ as to the application of these terms. For example, if a person (whether a clerk, secretary, or president of a corporation) asks a Congressmen for a copy of a bill, or calls him up solely to ask the status of a bill he has, in effect, "influenced action taken with respect to a bill"-- yes, action has been taken: a bill has been sent, a status report has been given. Should these communications be included within the term "lobbying"? If so, the line for registration could circle the globe.

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1. Connally v. General Const. Co., 269 U.S. 385, 391 (1925).
2. U.S. v. Harriss, 347 U.S. 612 (1953).

Yet it is highly foreseeable that a layman could carry the meaning of the phrase that far.

Also in S.815, there is an additional vagueness which may be found in one of the "lobbyist tests", defining lobbyist as "one who receives income of $250 or more during a quarterly filing period, for employment or other activity, and lobbying is a substantial purpose of such employment or activity." In our view, the word "substantial" suffers from the same shortcomings as have been found to exist in the word "principal" in existing law. It still leaves it up to the individuals, companies, or organizations to determine whether or not all, or a part of their activities are covered, and they must also ask themselves: "When does a purpose become "substantial"? The term is not defined in S.815, and is subject to varying interpretations. Since S.815 would create a criminal law, the coverage should be precise and afford the adequate notice necessary to satisfy the requirements of due process.

THE BILLS ARE UNNECESSARILY BURDENSOME

Various writers on the subject of lobbying have concluded that the fundamental issue from the outset of lobbying regulation has not been whether the states or national government should regulate lobbying, but how effective such laws can ever be.3/

The proposed bills S.774 and S.815 would, in our view, be ineffective due to their vague definitions which would fail to adequately apprise

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3. Smith, J.W., Regulation of National and State Legislative Lobbying, 43 Det. L.J. 663, at 680 (1966).

persons whether their actions come within the conduct required to be registered, reported, or recorded. But apart from all of the constitutional issues, these bills would be so burdensome, and would require so much paperwork and recordkeeping (on the part of the Executive Branch by virtue of the logging provision, as well as upon the lobbyists), that any interested member of the public would need a guide to reach the data, and an expert to explain and interpret it, by picking out the essential from the non-essential information.

We believe that there are a number of unduly burdensome, and totally unnecessary provisions in S.774 and S.815, and we feel they will hinder the effectiveness of any new lobbying law. For example, S.815 would require to be recorded and reported itemized accounts of expenses over $10 for lobbying, including expenditures for research, advertising, staff, offices, travel, mailings, and publications. S.774 would require each expenditure made directly or indirectly to or for any Federal officer, as well as expenses for research, advertising, staff, offices, and mailing. It is obvious that these provisions will create a mountain of paperwork which in turn must be processed and published at the taxpayer's expense. But we fail to see what bearing the cost of a box of paperclips or a roll of stamps, or similar unnecessary itemizations, would have in enabling the public, Congress, or the Executive Branch to determine whether or not any individual or organization was seeking unduly to influence the policymaking process.

We believe it is unnecessary to require disclosure of "total income received" by a lobbyist if the relevant question involves how much was received for lobbying. Publication of full salary when only a small portion is compensation for lobbying would inevitably cast doubt and suspicion, even though the record would show reporting requirements were being religiously adhered to.

S.815 would require the reports to include the identification of the subject matter of each oral or written communication which expresses an opinion, or contains information with respect to the policymaking process--a scope much broader than "communications made in order to influence." This provision goes beyond what in any circumstance could be considered necessary by requiring many non-lobbying related statements and communications to be reported, and it would not justify the huge burden it would create. For example, a lobbyist, in a casual conversation with a Federal officer could offer an opinion on an issue totally nonrelated to his work interests, expressing his private point of view only, yet he would have to report this coversation. Clearly the burden that could result is appalling.

We also question the efficacy of requiring a lobbyist to disclose on the notice of registration: "each aspect of the policymaking process which he expects to influence, including any committee, department, or agency, or any Federal officer or employee, to whom a communication is to be made, the form of communication to be used, and whether the communication is to be for or against a particular measure or action." These facts may be difficult for the lobbyist to ascertain when filing, and he may wind up commuting to the Federal Election Commission each day to amend his notice. We feel this provision would impose not only a difficult task upon the lobbyist, but also an unnecessary one, since this information is also required in the reporting sections of the bills, and at a time more convenient.

We urge this Committee to trim down the registration, recordkeeping, and reporting requirements with a more realistic and practical appraisal of what is in fact necessary to aid in "better evaluations" of lobbying activity. By providing unnecessary as well as burdensome provisions such

as those just mentioned, the bills have gone off their course, which was to provide an effective aid towards better evaluation of lobbying activity; instead, they bury essential information beneath a sea of unnecessary data.

THE RIGHT TO PETITION IS ABRIDGED BY THE INSTANT PROPOSALS

Among the indispensable democratic freedoms guaranteed by the First Amendment are the rights of the people to assemble, and to petition the Government for redress of grievances. The Supreme Court has stated that:

> The very idea of government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to government affairs, and to petition for a redress of grievances. 4/

Not only would the First Amendment prohibit legislation banning such activity, but it would also forbid legislation that is so vague or overbroad that it would result in a "chilling effect" upon the exercise of these rights. NAM contends that the legislative proposals before us suffer from the defects of vagueness and overbreadth, and if enacted, we feel that they will exert a definite "chilling effect" upon those seeking to exercise their rights to petition.

BUT, AS POINTED OUT BY CHILES, "DUE PROCESS" ALSO INCLUDES IN THE MEANING THE PUBLIC'S RIGHT TO KNOW.

One of the "lobbyist" definitions under both S.774 and S.815 defines "lobbyist" to be one who lobbies, and spends $250 for lobbying during a quarterly filing period. Lobbying has been defined as "a communication, or the solicitation or the employment of another to make a communication, with a Federal officer or employee in order to influence the policymaking process". These terms, in our view, are so overbroad as to include individuals seeking only to exercise their rights as citizens, under the First Amendment,

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4. U.S. V. Cruikshank, 92 U.S. 542, 552 (1876).

to petition the government for a redress of grievances. Consider these examples:

> 1) The night before a key vote, a concerned individual spends over $250 to send a telegram to every Congressman and Senator expressing his personal views "in order to influence action taken with respect to a bill. . . ."
>
> 2) A number of citizens each spend over $250 (apart from lodging and travel expenses) for placards, bullhorns, decals, and and similar paraphernalia, for a one day "assault on the citadel". They come to Washington on a day when Congress is in session, to rally on the Capitol steps "in order to influence action taken with respect to a bill, amendment, etc." (One recalls recent occasions when groups have peaceably assembled at the Capitol, and the White House, to address the unemployment, abortion, and busing questions.)

Both situations just described involve "communications in order to influence the policymaking process" and would be covered by the proposed bills (subjecting the individuals to registration, reporting, and recordkeeping requirements). Both situations also significantly involve individuals legitimately petitioning the Government for redress of grievances. We fail to see the compelling, overriding justification for inhibiting this vital First Amendment freedom through the imposition of registration, reporting, and recordkeeping requirements upon such individuals. We fear the obvious "chilling effect" that could result, and we must ask: How can one place a dollar value on a Constitutional right, particularly a First Amendment right? Is an individual who spends $249 to petition the Government entitled to more First Amendment protections than one who spends $251 for the same reason? We think not.

NAM believes that any lobby legislation, in order to stand the test of constitutionality, must clearly protect the rights of individuals to petition the Government for redress of grievances. Unfortunately, neither S.774 nor S.815 provide this vital protection.

THE BILLS ARE INCOMPLETE, LEAVING OUT IMPORTANT LOBBYISTS

NAM believes that the instant proposals are inequitable, and do a disservice to the public interest by omitting important segments of the lobbying population.

The bills exclude "communications or solicitations by a Federal officer or employee, or by an officer or employee of a state or local government acting in his official capacity". By virtue of this exemption, Congressional staffers may drum up support for their bills all over the Hill, Congressmen and Senators can "lobby" other Congressmen and Senators for their votes, as well as agencies for their support; executive agencies may lobby other Agencies and the Congress "through official channels," and the public will not know of any of these important factors which play a part in the formation of important decisions and votes. We believe that the purpose of the proposed lobbying law, which is to bring out in the open the various lobbying activities,[5] will not be effectuated, unless the disclosure provisions apply to all lobbyists equally. Certainly the public is entitled to know all the directions from which pressures are exerted, instead of only certain selected ones, especially since a key lobbying force comes from within the cloakrooms, and the staff cafeterias.

A powerful source of lobbying comes from state and local governments. In a law review article entitled "Regulation of National and State Legislative Lobbying", the author refers to this forceful lobbying constituency:

> ". . . nor is lobbying, in its generic sense, confined to private, group-articulated demands. Cities also lobby in Washington--Long Beach, Oakland, San Francisco, and Los Angeles, Norfolk, North Miami Beach, Newark, and Philadelphia all maintain some type of representation in Washington."[6]

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5. U.S. Cong. Rec., Feb. 20, 1975, at S. 2277

6. Smith, J. W.,,Regulation of National and State Legislative Lobbying, 43 Det. L.J., 663, at 680 (1966).

Needless to say, if a state (or multi-state) delegation comes to Washington to present its views to its Senators and Congressmen on an issue, these views will receive considerable deference. The group may also present its views to other Senators and Congressmen. Isn't the public entitled to know of these very important communications?

The Pentagon is a powerful source of lobbying which would also be left untouched by this inequitable proposal.

NAM believes that lobbying legislation should treat equally all who are engaged in lobbying, and it should not improperly assume that certain segments are above reproach or scrutiny.

S.774 AND S.815 COULD CREATE A RESTRAINT ON FREEDOM OF SPEECH

We believe that the establishment of elaborate and detailed registration, reportmaking, and recordkeeping requirements such as those proposed in S.774 and S.815 will inevitably inhibit in some measure the exchange of much valuable information--we fear that the institution of such a registration and reporting procedure could in fact create an effective restraint on the rights of individuals to exercise their First Amendment freedoms. For example, these bills could compel one (other than a candidate for office), to register as a condition of making a speech, if one purpose of the speech is to "solicit others to make communications with Federal officers or employees in order to influence the policymaking process." In this regard, it would be well to bear in mind the case of Thomas v. Collins, 323 U.S. 516 (1945), where a labor union representative was prosecuted for delivering a speech before first having registered as a union organizer. The Supreme Court held that it was impermissible to require registration as a condition precedent

to the exercise of freedom of speech, and it expressed this ultimate view:

> "If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment." 7/

We are concerned that a similar Thomas v. Collins situation could arise under the proposed bills, and it would indeed be unfortunate if the long and arduous labor of the Congress to create a workable piece of lobby legislation culminates in a statute which is unenforceable because it infringes upon freedom of speech and is unconstitutional.

THE MEMBERSHIP DISCLOSURE PROVISION VIOLATES FIRST AMENDMENT GUARANTEES OF FREEDOM OF ASSOCIATION

S.815 and S.774 provide that each report shall contain (among other things) an identification of each person on whose behalf the lobbyist performed services, including the identity of any member of a voluntary membership organization who contributed in dues more than $100. These reports are made available to the public by the Federal Election Commission. This membership disclosure provision is objectionable for several reasons. Its chief repugnance lies in the fact that it impedes the freedom of association rights guaranteed to members and future members of voluntary membership organizations by the First Amendment.

In Gibson v. Florida Legislative Investigation Committee, 372 U.S. 543 (1963) a legislative committee was investigating an asserted infiltration of

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7. Thomas v. Collins, supra, 323 U.S., at 530

the NAACP by communists. The NAACP refused to produce its organization's membership lists on the grounds that it interfered with the free exercise of associational rights of members and future members of the NAACP, guaranteed by the First Amendment, and made applicable to the States by the Fourteenth. The Supreme Court supported the NAACP's refusal, applying the very strict standard of constitutionality utilized in abridgement of "fundamental freedoms" cases:

> There must be a substantial relation between the information sought, and a subject of overriding, and compelling state interest--whether the committee has demonstrated so cogent an interest in obtaining and making public the membership information sought to be obtained so as to justify the substantial abridgement of associational freedom which such disclosures will effect.8/

The Supreme Court held that there was no overriding, compelling justification for inhibiting this important freedom.

NAM believes that such a membership disclosure requirement as provided in S.774 and S.815 would unduly inhibit the members' (and prospective members') freedom of association, as well as freedom of expression. For example: there may be some persons who join voluntary membership organizations solely to have a forum to air their views; these views may differ with the predominating points of view of the association. If the identities of these members are going to be disclosed (as S.774 and S.815 would do, identifying them as "persons on whose behalf the lobbyist performed services as a lobbyist") they may decide not to join, or if they have already joined,

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8. Gibson v. Florida Legislative Investigation Committee, 372 U.S. 543 (1963).

they may withdraw. This would result in a hampering of valuable ideas and views which are needed by the association, and would impede the Association from having a diversified membership.

The Supreme Court has held that the First Amendment rights of free speech and free association are protected not only "against heavy-handed frontal attack", but also "from being stifled by more subtle governmental interference".[9/] And whether the beliefs are economic, religious, cultural, or political, the Court has held the members have a right to be secure in their associations.[10/]

Inasmuch, as the provisions in S.774 and S.815 requiring disclosure of membership rolls interfere with the freedom of association and expression guaranteed by the First Amendment to members and prospective members of voluntary service organizations, these provisions should be deleted. There is no compelling overriding justification in S.774 or S.815 for their intrusion upon these important First Amendment guarantees.

THE LOGGING PROVISION OF S.774: OVERBROAD, BURDENSOME, AND A NEW BARRIER BETWEEN THE EXECUTIVE BRANCH AND THE PEOPLE

S.774 imposes a logging requirement upon officers of the Executive Branch GS-15 and above; these persons are required to prepare a record containing information regarding each oral and written communication initiated by persons outside the agency or department "expressing an opinion, or containing information with respect to the policymaking process." The

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9. Bates v. Little Rock, 361 U.S. 516, (1960).

10. N.A.A.C.P. v. Alabama, 357 U.S.449 (1959); Griswold v. Connecticut, 381 U.S. 479 (1965).

record must contain: the name and position of the official who received the communication, the date, identification of person from whom the communication was received and of the person on whose behalf such person was acting, a brief summary of the subject matter of the communication, copies of any written materials, and a brief description of any action taken.

Our first objection to this provision is that it is unnecessarily broad, sweeping within its terms communications which have no connection at all with lobbying. Imagine this situation:

> GS-15, is sitting at the breakfast table with wife and son.
>
> Wife asks: "Have you reached a decision yet on whether to allow a rate-increase for XYZ? I believe this case is taking entirely too long. I'm totally against any more rate increases in that, or any other industry. Look at our electric bill."
>
> Son says: "Dad, I heard from Bobby's dad that if XYZ loses, they will appeal right up to the Supreme Court."

Should GS-15 have to log his wife's comments, which express an opinion " to a Federal officer respect to the policymaking process", i.e., action taken in an adjucatory or rule-making proceeding before the regulatory agency"? His son's comments provide "a Federal officer with information with respect to an action before the agency". Is he required to record them?

It is obvious that under this provision, the possible candidates for for logging could be endless. Moreover, the judgemental factor alone on the part of the executive official who must decide which communications to log would take up a considerable amount of his productive working time, which, coupled with the time spent actually logging, would leave a very small remainder within which he could assume the tasks for which he was hired, or appointed. But even more significantly, the purpose of the bill,

which is to bring out in the open lobbying activities,[11] can be achieved by means far less sweeping than the broad logging provision of Section 7 of S.774, which goes beyond disclosure of lobbying activities and seriously intrudes upon important First Amendment rights.

Indeed, in our view the logging provision could have a "chilling effect" upon legitimate and important communications between the people and members of the Executive Branch. For example, consider the individual who sat next to GS-15 on the bus the other morning, offering an opinion on an item in the news that concerned "action taken by a Federal officer with respect to a policy matter before the Executive Branch." Imagine his incredulity upon learning that his name appears on federal logs (and this could occur, we believe, under the proposed logging provision). In our view, there is no overriding, compelling purpose for this proposal which we feel will seriously "chill" freedom of speech.

It has been a goal of our nation to encourage participation in the governmental process by as many people as possible, from all walks of life. We have seen the detrimental effects upon our country's morale which resulted from a huge barrier placed between the Executive Branch and the people. We have now heard words of an "open" administration, and that barrier has apparently been lifted. This logging provision, in our view, could cause a new wall to be built between the Executive Branch and the general public.

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11. U.S. Cong. Rec., Feb. 20, 1975, at S.2277.

Additional Comments

1. NAM supports placing the powers of administration and enforcement within the Federal Election Commission, but we feel its authority should be subject to the terms of the Administrative Procedure Act, in order to insure that due process of law will be afforded to the participants in every investigation or hearing taking place before the Commission.

2. The Federal Election Commission should not be shackled with a mandatory requirement to conduct an investigation in every instance where "any person who believes a violation has occurred" files a complaint. Whether to conduct an investigation should be discretionary with the Commission; otherwise, innocent individuals, companies, or organizations could become easy targets for harassment.

3. Extending the coverage of a lobbying law to include communications with Executive Branch officials would be unduly burdensome, and unnecessary in many situations since there are existing rules in most executive agencies with respect to "ex parte communications."[12/]

4. We object to the fact that the term "voluntary membership organization", as defined in both S.774 and S.815, limits the term to those organizations which require its members to make regular payments as a condition of membership. A great number of very broad-based organizations, conducting extensive mass-mailing campaigns will, by means of this escape route, forego having to disclose any financial or other information with regard to such mailings or other publications. This is an unfair distinction.

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12. FPC Reg., 18 C.F.R. §1.4(d) (1974); FTC Reg., 16 C.F.R. §4.7 (1974).

5. There is no apparent or logical reason for including under the definition of lobbyist, as S. 815 does, one who communicates orally on eight or more separate occasions. We suggest deletion of this provision altogether.
6. We particularly object to the expenditure criterion established by Sec. 3 (j)(2) of S.815. Here a lobbyist becomes "any person" (including a corporation) who makes an expenditure for lobbying of $250 or more during a quarterly filing period. Under this definition, if a corporate executive were to fly to Washington on a single occasion to see his Congressman about a legislative matter of importance to his company, the company itself would have to register and report the expenses of the trip. This seems completely unreasonable and destined to forestall many lines of crucial communication between the business community and Congress.

CONCLUSION

In sum, NAM agrees that we must find a workable alternative to the existing lobbying law, but in our zeal we must remember that no law is better than an unconstitutional one. We urge you to to protect the rights of individuals to associate freely, and to petition their government for redress of grievances. We would like to see eliminated those unduly burdensome and unnecessary disclosure provisions which we have just discussed, since we believe that they will only serve to confuse and distract the public from focusing upon the essential information.

NAM opposes S. 774's logging provision which, in our view, will provide a setback to keeping an "open-line" between the Executive Branch and

the people.

Furthermore, we feel that any lobbying law should treat equally all who lobby; S. 774 and S. 815 omit key segments of the lobbying population.

Finally, NAM believes that the instant proposals suffer from the fatal defect of vagueness. We can predict nothing but difficulty for many individuals, companies, and organizations who will be unable to determine how many, if any, of their activities are covered.

For all of the reasons stated herein we must oppose S.774 and S.815.

Senator METCALF. The committee will now be recessed subject to the call of the Chair.

[Whereupon, at 12:30 p.m., the committee recessed, to reconvene subject to the call of the Chair.]

LOBBY REFORM LEGISLATION

TUESDAY, NOVEMBER 4, 1975

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met in room 3302 Dirksen Senate Office Building, pursuant to call, at 10:29 a.m., Hon. Abraham Ribicoff (chairman) presiding.

Present: Senators Ribicoff, Brock, and Percy.

Staff present: Richard Wegman, chief counsel and staff director; Paul Hoff, counsel; Matthew Schneider, counsel; Marilyn A. Harris, chief clerk; Elizabeth A. Preast, assistant chief clerk; Brian Conboy, special counsel to the minority; and Connie Evans, minority counsel.

Chairman RIBICOFF. The committee will be in order. Today we start an additional round of hearings on lobbying reform legislation.

CONTINUATION OF HEARINGS

I am pleased to begin today an additional round of hearings on lobbying reform legislation. The committee previously held 3 days of hearings on lobbying legislation in April and May of this year.

The five bills before us today, including three that are sponsored by members of this committee, reflect the great interest in this committee in the need for lobby reform. I am especially grateful that the bill I introduced last month, S. 2477, is cosponsored by six other members of this committee in addition to Senators Kennedy and Stafford.

Witnesses at the committee's prior hearings all agreed that reform of the present 1946 act is essential. We have heard repeatedly that the present law is too limited in scope, vague in its wording, and too weak in its enforcement authority.

The Christian Science Monitor has estimated that under the present law, only 1 percent of the money believed to be spent on lobbying is actually reported, and that only one-third to one-sixth of those who lobby register at all.

Under the present law, vast and sophisticated indirect lobbying efforts go unreported. Large membership organizations now have computerized mailing lists which permit them to quickly match up officials and influential constituents. Large organizations have the capability of soliciting great numbers of people quickly, such as the corporation which recently solicited over 1 million of its stockholders urging them to write their Congressmen in support of particular legislation.

There is nothing necessarily wrong with this activity but it should be disclosed so that the Congress and the public know what interests are attempting to influence what issues.

The record of these hearings to date leave no doubt that new legislation is required and that it must cover indirect lobbying as well as direct lobbying. Nor is there any doubt that any new legislation must apply even-handedly to all interest groups which engage in significant efforts to influence the decisions Congress makes.

The challenge before this committee is to prepare such legislation without unconstitutionally interfering with the right of the individual or a small organization to petition their government. I expect a number of the witnesses will be addressing themselves to this constitutional issue.

Another important issue which I hope the witnesses can examine in the next 3 days is the extent to which any new lobbying legislation should apply to the executive branch. Drafting a new lobbying act which is both effective and practical is not an easy task, but I am confident that these additional days of hearings will help resolve any remaining issues.

I expect that at the conclusion of this round of hearings the committee will be able to move expeditiously to approve legislation which will finally give this country a lobbying act worthy of its name.

Our first witness is John C. Keeney, Deputy Assistant Attorney General, accompanied by Mary Lawton, Deputy Assistant Attorney General.

You may proceed, sir.

TESTIMONY OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, ACCOMPANIED BY MARY LAWTON, DEPUTY ASSISTANT ATTORNEY GENERAL

Mr. KEENEY. Yes, Mr. Chairman. In addition to Deputy Assistant Attorney General Lawton of the Office of Legal Counsel, I am accompanied by Roger Pauley of the Criminal Division, Mr. Chairman.

Mr. Chairman, at this time I would like to offer my prepared statement with its two appendixes to be put into the record, and also, if the chairman would allow, I would like to very briefly summarize some of the salient points that we made in the statement.

Chairman RIBICOFF. That is fine. Without objection, the entire statement will go into the record as if read, at the conclusion of your testimony.

Mr. KEENEY. Chairman Ribicoff and Senators, we appreciate the opportunity we had to work with the staff of the committee on S. 2477. I might say that with a few reservations and some suggested changes, the Department of Justice favors enactment of S. 2477 as a substitute for the 1946 act, which was largely unenforceable for the reasons given by Deputy Attorney General Tyler before the committee earlier this year.

S. 2477 presents reasonable solutions to many of the problem areas of the 1946 act, and we believe it can be enforced.

I would like to address myself to some of the remaining reservations and objections we have with respect to S. 2477. They are these:

First, with respect to section 4(c)(2), which extends the scope of the bill to solicitations by anyone of communications to an officer or employee of the executive branch, to influence an issue before the executive branch. With respect to this, we would like to point out

that it does not cover direct lobbying, the lobbying type contacts with the executive branch, but only the solicitation of others to make such contacts.

We believe that both direct lobbying and solicitation of others to lobby should be included in appropriate legislation, but not in this legislation. We think that the problem of lobbying before the executive branch is so complicated and complex that it should be covered by separate legislation.

Chairman RIBICOFF. Why do you make the differentiation, Mr. Keeney?

Mr. KEENEY. Well, maybe not as a matter of principle, but as a matter of practice there are so many different areas that would be covered in the executive branch—for instance, the Department of Justice, the variety of contacts that are made with respect to litigation or with respect to complaints or with respect to an offer to plead guilty—all these might well be covered.

We also get into the area of the administrative agencies, we get into the question of rulemaking where the agencies actually solicit the views of various interested groups. We also get into the litigative and adjudicative process where the situation might be closer to the Department of Justice. There are contacts being made with respect to individual cases.

We think there is such a variety of situations to be covered that it is a matter that should be rather thoroughly explored and then come down with some detailed specific legislation. We do think it warrants serious consideration for coverage.

But we think the legislative situation as to which we have the 1946 act as a model, albeit a largely unenforceable model, is something we can build on with respect to legislative contacts.

And some more consideration should be given to how and what contacts with the executive branch should be covered.

Chairman RIBICOFF. I may be sympathetic to your point of view, but don't you think that we could take that into account. Our staff could work with the Justice Department, to put those amendments right into this legislation, as long as we are handling the subject?

I understand what you are saying, I am just wondering why we couldn't do it in this bill.

Mr. KEENEY. Yes, sir, your suggestion is, of course, an alternative, to delay the enactment of legislation and to hold extensive hearings with respect to the problem in the executive area and then come down with one piece of legislation.

I think it could be done, Senator Ribicoff, in one piece of legislation. I am suggesting what I think is a better alternative—separate legislation—so as not to hold back this legislation, which seems to be proceeding in a rather expeditious manner.

Senator BROCK. Are you saying, Mr. Keeney, that you are presently studying the problem or you would be prepared to undertake such a study and give us your recommendations in a reasonable period of time?

Mr. KEENEY. Senator Brock, the problem with it—I think the study is going to have to be done, to a large extent, by the Congress in order to determine what type of problems are to be met. We have not initiated an independent study of what problems might be encountered

in covering executive branch contacts. We can speak for the Department of Justice where we have our own internal regulations with respect to so-called outside the normal area contacts. We are required to make our own internal record with respect to contacts that are not made in the normal course of our business.

But how to apply that to other agencies, particularly the regulatory agencies, I have some concern. I really don't feel competent to address the subject, Mr. Brock.

Chairman RIBICOFF. You may proceed, sir.

Mr. KEENEY. The second point I would like to make is section 12 gives to the Comptroller General the option to bring civil suits to secure compliance in lieu of referring the matter to the Department of Justice, where such litigative responsibilities have traditionally been lodged.

Now, section 12(b) also prohibits the Department of Justice from initiating any actions to restrain ongoing violations or to force compliance without a referral from the General Accounting Office.

This provision, both provisions, have a potentially crippling effect on our ability to carry out our law-enforcement mandate. We need, as Deputy Attorney General Tyler pointed out, civil and criminal enforcement responsibility in order to give us flexibility in providing maximum effectiveness in enforcement of the statute.

Another point we would like to make is that it would be less confusing if sections 3 and 4 of the bill were combined, so there is just one definitional section, along the lines of appendix A,[1] which is attached to my statement.

Also, the public official exception in 4(d)(5) may not eliminate the problem created by *Bradley* v. *Saxbe*. If it is intended to apply the legislation to paid lobbyists acting on behalf of State and municipal governmental entities, then we suggest adoption of the language in 19(c)(5) of our appendix A. We think it is a legislative judgment as to whether or not private paid lobbyists on behalf of State and local municipalities are to be covered under the statute. If they are, then we propose our language as a substitute for the present language.

Also, our experience with the Foreign Agents Registration Act indicates that the recordkeeping provisions of the present proposed bill are inadequate. We would prefer that section 6 clearly cover such nonfinancial records as correspondence between the lobbyist or the would-be lobbyist and his clients. We might suggest here that in expanding the recordkeeping provision making things as correspondence between the client and the lobbyist, or someone who should be registered as a lobbyist, available for examination of the GAO. It could be a very fruitful source of lobbying activities by individuals who should be but are not registered.

Also, since many, if not most, lobbyists seem to be attorneys, we believe the legislation should clearly state that the lawyer-client privilege does not apply to the recordkeeping section, so that the GAO and the Department of Justice in a criminal enforcement by use of a subpena can have access to the correspondence between the lobbyist and the client to carry out the enforcement responsibilities which are lodged with each.

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[1] See p. 432.

Finally, we believe that a fourth subsection should be added to section 14, making it a criminal offense to willfully fail to comply with the recordkeeping requirements of section 6, just as it would be a criminal violation not to comply with the registration and reporting obligations imposed by sections 5 and 7.

A draft incorporating these and the other suggestions we have is attached as appendix B.[1] We would, Mr. Chairman, be pleased to continue to work with the staff with respect to all of these suggestions and any other suggestion that might come up.

Chairman RIBICOFF. I want to thank you on behalf of the committee for your cooperation. We should try to get the best act we can. This is a very complex area, and we will need this cooperation.

I do appreciate your willingness to work with the staff to try to work out the differences, so we can have a good bill.

Thank you very much. Senator Brock?

Senator BROCK. Just a couple of questions on the matter of the corespondence between the lobbyist and the client.

It seems to me that you are getting into a rather severe question of personal privacy.

Mr. KEENEY. Yes, sir, we may be, Senator Brock, but we are also getting into a situation where if we don't have something like that we are making an unfair discrimination in favor of lawyers as distinguished from other lobbyists.

Senator BROCK. You are not interested in doing that, heh?

Mr. KEENEY. Well, we are just trying to suggest that it would be advisable to put lawyers on the same footing as anyone else when they are acting as lobbyists, not when they are acting as lawyers.

Senator BROCK. That is a terribly difficult distinction to make in legislation.

Mr. KEENEY. I am sorry, Senator?

Senator BROCK. I say that is a very difficult distinction to make in legislative terms.

Mr. KEENEY. Well, I agree that it is a difficult distinction to make, but since there is no constitutional underpinning for the lawyer-client provilege, we believe that we can take the lawyer-client privilege out of the ambit of this particular legislation, so that a lawyer who is going to engage as a lobbyist is on notice that he has no claim or that the legislature concludes that he has no claim of lawyer-client privilege in this area.

He is being treated as a lobbyist and not as a lawyer, Senator Brock, is what I am suggesting.

Senator BROCK. I am just not sure I know the difference sometimes. I think there are going to be some extremely difficult delicate gray areas where if we do what you suggest, I think we may get into some areas which do involve constitutional rights. But I would welcome your advice.

That is something we will have to work on anyway. Let me go to the other question that you mentioned at the outset of your testimony with regard to 4(c)(2) and the relationship of this bill to lobbying with executive branch agencies. And just to pursue the previous question I asked, do I understand that you are saying, in effect, we

[1] See p. 433.

could expedite the process of the legislation if we treated the two matters separately—the legislative and the executive lobbying questions?

Mr. KEENEY. That is my judgment, Senator, yes.

Senator BROCK. It is not a matter of your objection to any particular section in the executive branch so much as it is the lack of ability to come to grips with a problem that is unduly complex?

Mr. KEENEY. Yes, sir. It is not an objection to coverage of the executive branch, but just a suggestion that it would be more appropriate and more expeditious to cover the executive branch in separate legislation or, alternatively, as Chairman Ribicoff has suggested, maybe in this legislation—but I think it would require some more fact-finding and study with respect to how to cover the executive branch, and the various agencies, regulatory agencies and executive agencies, that are in the executive branch.

Senator BROCK. I find it somewhat difficult to make a distinction between types of lobbying—it is a functional distinction. It may be that the problem is so complex as to delay implementation of any legislation.

I do think it would be worth your time and ours for you to begin at least the preliminary stages of a study which would allow you to comment with some specificity to the different types of agencies that would be covered by different application of the law—the difference between regulatory agencies and executive agencies and so forth.

I do think that we are going to need the advice of your Department with regard to some of the problem posed by the Administrative Procedures Act, for example.

But if you have not undertaken such a study yet, I think it would be worth considering, because I think the Congress is going to be asking some questions of you as we go through this bill. And I don't know where else we turn if not to the Department of Justice for our legal counsel.

Mr. KEENEY. Senator Brock, my difficulty with that is that I think the Department of Justice itself needs advice from some of the other representative type agencies as to what type of problems that would be created. Excuse me.

[Mr. Keeney confers with Ms. Lawton.]

Ms. LAWTON. We were essentially discussing, Senator, the capability of the Department to deal with a study of this nature. As Mr. Keeney mentioned, we had a reporting of outside contacts order in the Department several years ago. Problems arose in interpreting it immediately as to the 26 separate components of the Department, which have quite different functions and responsibilities and experience in the area.

We have had a study under way now for 6 to 8 months trying to revise the order for the Department of Justice alone and have not reached a satisfactory solution. We will be addressing the issue to the best of our abilities, since there is separate legislation on the identical topic pending now in the Senate, and we will be testifying on it, we will be giving our best judgment as to where the problems lie.

But the diversity of the financial-type institutions, the regulatories, the essentially grant program agencies, which we are not, and the litigating agencies which, of course, we can speak for—is so diverse

that it will take extensive hearings, whether by the Congress or by us.

And since the Congress has already scheduled such hearings, we had not as yet contemplated an independent study. Obviously, we could do it—the administrative conference of the U.S. courts could do it—or, I am sorry, the administrative conference—and I believe is looking into it.

Senator BROCK. Do I understand the problem—as you noticed, I am an original sponsor of the legislation and I have found out some of the difficulties that are involved, it is a rather nice sounding concept which is very difficult to implement.

I just don't want to see us get into a situation with either of two instances happening. One, we either delay, delay, delay so that there is no improvement at all, or, in the contrary, we act in such an all-inclusive nature and a broadly stated approach that cannot be specifically applied by agencies, so that we do absolute damage to the process.

I think that is the dilemma the committee faces at the moment and that is why I am reaching for more specific advice from the people of the Justice Department, who do have, I think, a superior competence in this area. I think it is hard for me to find other agencies that would be able to evaluate the constitutional questions as carefully as the Justice Department could. But that is just a plea for additional help as we go through this process, I guess.

Chairman RIBICOFF. Thank you very much. We do appreciate your cooperation, and we will be talking with you during the days ahead.

Mr. KEENEY. Thank you, Senator.

[The prepared statement of Mr. Keeney follows:]

PREPARED STATEMENT OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, CONCERNING S. 2477, LOBBYING ACTIVITIES

Mr. Chairman and members of the Committee, it is my sincere pleasure to appear before you this morning for the purpose of presenting the views of the Department of Justice on S. 2477, the Lobbying Act of 1975.

Last May, the Deputy Attorney General appeared before you to present the Department's general views concerning the need for reform of the 1946 Act, and to specifically address two bills then before you, S. 774 and S. 815, which sought to achieve that end. Members of the Committee may recall that Mr. Tyler reviewed the deficiencies in the present law, the need for reform in this important area, and the willingness of the Department of Justice to work with you and your staff to achieve this goal.

We have been gratified that the Committee has sought our help. In fact, several productive working sessions have been held between representatives of the Department and members of your staff. The product of these exchanges is by and large reflected in the legislation before you this morning, and with a few reservations and recommended changes, to which I will refer shortly, the Department of Justice favors the enactment of S. 2477.

Briefly stated, it is our position that S. 2477 presents a reasonable solution to a majority of the perplexing problems which have been inherent in the 1946 Act and which have inhibited its effective enforcement for so long.

Initially, it would substitute for the defective concept of "principal purpose", objective standards which trigger coverage by the substantive provisions of the bill. In recognition of the right to petition the Government secured to private citizens by the First Amendment, the legislation would expressly exclude from the concept of "covered communications" personal contacts by individuals with Congressmen and their staffs. Moreover, we feel that the distinction which this legislation makes between individual lobbyists and organizational lobbyists is a sound one, and we note further with agreement the fact that under this

bill individual lobbyists would personally be under an obligation to comply with the registration and reporting requirements only in the rare instance where they are not employed by any organization subject to the Act and are paid for their lobbying efforts. In most instances, it is the organization that retains lobbyists which must file the public reports. This approach, in turn, goes a long way toward reducing any "chilling effect" which legislation of this type might have on lobbying activities, without substantially diminishing the quantum of information required to be disclosed.

In addition, we note with satisfaction that S. 2477 entrusts administrative enforcement responsibilities to the Comptroller General. It also restricts the scope of the criminal provisions contained in section 14 to situations involving willful failures to file or fraudulent filings. As you know, the 1946 Act failed to provide for any agency to police compliance with its provisions, a factor which has played a major role in the paucity of violations which have been brought to our attention over the years.

It has long been our view that unintentional, unaggravated failures to comply with financial disclosure statutes such as the Lobbying Act are not appropriate subjects for criminal prosecution, and would best be enforced by less drastic means. We also approve the fact that with the exception of one provision to which I will refer later, S. 2477 does not attempt to deal with the intricate problems inherent in extending a Legislative Branch lobbying bill to communications directed at influencing the decision-making processes of the myriad of Executive Branch Departments and Agencies. The instant legislation would, however, properly extend to the Executive Branch insofar as a lobbyist might communicate with an officer or employee of the Executive Branch for the purpose of enlisting his support to influence the legislative process in the Congress.

The bill would also cover contacts made with officers or employees of the Legislative Branch designed to enlist their intercession in Executive Branch decision making. Although this facet of the bill is somewhat alien to its general thrust, we have no strong objection to its inclusion.

S. 2477 has many other redeeming features which command its enactment: It would eliminate a perplexing loophole in the coverage of the present law concerning lobbying-type contacts with individuals other than Congressmen themselves. As the Committee is aware, the present Lobbying Act, as construed in *United States* v. *Harriss*, 347 U.S. 612 (1954), applies only to contacts made directly with Members of Congress. This bill would clarify present ambiguities concerning the obligation of officers and employees of the Executive Branch of government to register and report as lobbyists whenever they contact Members of the Legislative Branch of government concerning governmental matters of mutual interest. At the same time, it would extend the coverage of the present law to contacts made with officers or employees of the Executive Branch of government which are made for the purpose of securing the assistance of such employees in influencing the legislative process. We support this extension as both a necessary and proper adjunct to the bill. The bill also would clarify the extent to which the Internal Revenue Service may use the fact of registration as a lobbyist to effect one's tax status; and we support the conclusion reflected in section 8 which would permit registration to be used as one of many factors indicating participation in the political process.

S. 2477 would also provide for a means by which ambiguities which may be inherent in the final text of the bill can be expeditiously resolved through the issuance of regulations, the rendering of binding Advisory Opinions, and through the unique "duty" imposed by subsection 10(10) upon the Comptroller General to assist those subject to the Act in complying with its accounting procedures, and record-keeping and reporting requirements. Finally, the bill would mandate that the maintenance of records required by section 6, as well as registration statements and reports required to be filed by sections 5 and 7, be retained for a period of five years rather than the present two-year requirement. The shorter period, which is set forth in 2 U.S.C. 262 and 265, has had the *de facto* effect of reducing the normal five-year period of limitations applicable to criminal violations under the 1946 Act to the two-year period after which pertinent records may be destroyed and after which the Clerk of the House and the Secretary of the Senate are no longer required to keep filings in the public domain which are effected pursuant to the present law.

Of course, it has not been possible for our productive interchange with the Committee's staff to result in unanimous agreement on all aspects of the proposed

legislation, and in this regard we offer the following criticisms. We feel that their incorporation into S. 2477 would produce a bill which is easier to understand and to comply with, and which would be more efficiently enforced.

Paramount among these is the provision contained in section 4(c)(2) which would extend the scope of this bill to certain types of lobbying before Executive Branch agencies. Although the Department of Justice recognizes the need for some form of lobbying disclosure legislation which would address those who seek to influence the actions of the various Executive Branch agencies, we do not believe that such an objective should be included in legislation which is primarily directed at Legislative Branch lobbying. The subject of Executive Branch lobbying is complex, owing primarily to the unique, peculiar, and divergent functions of the numerous Executive Branch Agencies, and the equally complex ways in which they operate. In order to reach lobbying before these bodies through legislation which would be truly responsive to the varying manners in which these agencies operate, we suggest that the Congress should address this subject separately, giving it the close drafting scrutiny which we feel is required. We stand ready, as before, to assist the Committee in accomplishing this task.

We point out, in addition, that the text of the proposed legislation would reach only the solicitation of others to contact Executive Branch officials concerning an "issue before the Executive Branch". It does not cover direct lobbying-type contacts with Executive Branch officials, which, in our view, should ultimately be covered in the same manner in which S. 2477 reaches such contacts for the purpose of influencing the Legislative process. For these reasons, we do not believe that the subject of Executive Branch lobbying properly belongs in this bill, and we recommend that the scope of S. 2477 be confined accordingly. Draft language by which we suggest this and other recommended results, may be achieved, is attached as Appendix A to these remarks.

Second, we do not believe that litigative responsibilities should be placed with administrative agencies outside the Department of Justice. Under section 12 of S. 2477, the Comptroller General would have the option of bringing civil actions in his own name to secure compliance in lieu of referring such matters to the Department where such litigative responsibilities have been traditionally lodged. We also view as unacceptable the provision contained in section 12(b) which would prohibit the Department of Justice from initiating civil actions to restrain ongoing violations of the Act, or to force compliance, in the absence of a formal referral from the Comptroller General. Provisos such as this have a potentially crippling effect on this Department's ability to carry out its law enforcement mandate.

Third, we have some problem with sections 3 and 4 of the bill, which together define its scope. In this regard, we would prefer that the scope of the bill be included in a single definitional section by adding to section 3 new subsections (19) and (20) defining the terms "covered communication" and "lobbyist", respectively. Singling out these two words of art for special treatment in a separate section 4 is, in our view, confusing. Moreover, we do not feel that the "public official" exception to "covered communication" contained in section 4(d)(5) eliminates the problem created by the decision of the federal district court for the District of Columbia in *Bradley* v. *Saxbe*, 388 F. Supp. 53 (1974), which construed similar words in the present Lobbying Act to exempt paid, professional, lobbying campaigns undertaken by private lobbyists on behalf of municipal or public interests. Likewise, we consider that the "publication" exemption presently contained in section 4(d)(6) is confusing. We have drafted and included in Appendix A a proposed text for the definitional section of this bill, and urge its careful consideration by the Committee. This proposal, we believe, would produce a substantially simpler bill, without any substantive alterations, save the elimination of certain limited facets of Executive Branch lobbying referred to earlier.

Finally, the proposed record-keeping provisions contained in section 6 of the bill are inadequate in view of the peculiar nature of lobbyists and the affirmative mandate given the General Accounting Office to actively monitor compliance and to investigate violations. The proposed text would merely require that "lobbyists and persons who retain lobbyists" maintain for five years "such financial records and other records relating to the registrations and reports required to be filed under this Act as the Comptroller General may prescribe as necesesary to the implementation of this Act". There is a question in our judgment whether this language would encompass such non-financial records as correspondence between the lobbyist and his client and other documentation not directly related

to the financial items which the substantive portions of the Act require to be disclosed. Yet, it is in just this sort of document that essential evidence lurks reflecting that an unregistered lobbyist has engaged in activities which would subject him to coverage by this legislation. Our experience in actively monitoring compliance with the Foreign Agents Registration Act, 22 U.S.C. 611 *et. seq.* (which contains a record-keeping section very similar to that in section 6) has demonstrated that without access to such ancillary documentation, effective enforcement of legislation such as this with respect to those who totally refuse to register at all is virtually impossible.

Further, in view of the fact that most lobbyists are attorneys who perform their functions in a professional capacity on behalf of one or more clients, records maintained by such attorney-lobbyists would be immune from discovery or inspection by virtue of the common-law attorney-client privilege. This privilege is reaffirmed by the Congress through Rule 501 of the new Federal Rules of Evidence unless the record-keeping sections of the new Lobbying Act expressly provide otherwise. We feel that the right of inspection should be expressly extended to officers and employees of the Department of Justice, in view of the fact that our Department is to retain, at the very least, an active role in criminal enforcement. We also suggest that a fourth subsection be added to section 14 of S. 2477 which would make it a criminal offense to willfully fail to comply with the record-keeping requirements of section 6, just as it would be not to comply with the registration and reporting obligations imposed by sections 5 and 7. A draft of text incorporating all of these recommendations is attached as Appendix B to these remarks, and again I commend them to your consideration.

For the foregoing reasons, the Department of Justice is of the view that S. 2477 is markedly superior to any of the other proposed lobbying bills pending before the Congress. With the recommended alterations which I have suggested in my remarks, we strongly urge its enactment. The Department of Justice continues to endorse the urgent need for legislation of this kind in order to rectify the glaring deficiencies in the 1946 Act, and we continue to stand ready to assist this Committee and its staff in achieving this goal.

APPENDIX A

Section 3. Definitions

(19) Communications and Solicitations.—

(A) Except as otherwise provided herein, the term "covered communication" means

(1) A communication with a Member, officer or employee of the Legislative Branch or with a committee or office of the Legislative Branch, for the purpose of influencing an issue before the Congress.

(2) A communication with an officer or employee of the Executive Branch requesting or soliciting such an officer or employee to communicate with a Member, officer or employee of the Legislative Branch, or a committee or office of the Legislative Branch, for the purpose of influencing an issue before the Congress.

(B) Except as otherwise provided herein, the term "covered solicitation" means any solicitation urging, requesting or requiring any person to make a "covered communication".

(C) The terms "covered communication" and "covered solicitation" do not include:

(1) Communications or solicitations by an individual, acting solely on his own behalf, for redress or personal grievances or to express his personal opinion.

(2) Communications or solicitations which relate solely to the status, existence, statement or content of a matter before the Congress, which in no way purport to influence the contactee on such matter.

(3) Testimony before a committee or subcommittee of the Congress, or the submission of written statements or other material pertaining thereto, which have otherwise been requested by the committee or the subcommittee in question, or any Member thereof.

(4) A communication or solicitation by a Department or Agency of the Executive Branch, or by an officer or employee of a Department or Agency of the Executive Branch, which is made through proper official channels and which pertains to a matter which is within the scope of interest of the Department or Agency in question.

(5) A communication or solicitation made directly by a State or a local governmental entity, which pertains to a matter of interest to the governmental entity in question: Provided, however, that this exception shall not apply to communications or solicitations made by organizations or individuals otherwise subject to the provisions of this Act merely because such individuals or organizations are in the ultimate employ of a state or local governmental entity, or because the matters which they seek to influence are of interest to a governmental entity.

(6) A communication or solicitation effected through the instrumentality of a newspaper, book, periodical, magazine or other publication of general distribution, or through a radio or a television broadcast: Provided, however, that this exception shall not apply to communication or solicitation which is effected through the publication of a voluntary membership association which is not customarily distributed outside the scope of the membership of said association; and Provided further that this exception shall not apply to the individual or the organization responsible for a communication or solicitation effected through a paid advertisement in a newspaper, magazine, book, periodical or other publication of general distribution, or through a radio or television broadcast.

(7) A communication or solicitation by a candidate as defined in 18 U.S.C. 591(b), or by a candidate for state or local office, which is made during the course of a campaign for such Federal, State or local office, which is made during the course of a campaign for such Federal, State or local office.

(8) A communication or solicitation by, or authorized by, a national party of the United States; or by a political party of any State, territory or possession of the United States; or by any organizational unit of such national or State political party: Provided, however, that the communication or solicitation in question pertains to the activities, affairs, undertakings, policies or platforms of said political parties or their organizational units.

(20) *The term "Lobbyist" means.—*

(A) Any individual who is retained for consideration, other than the individual's personal travel expenses, and who engages in one or more covered communications within a quarterly filing period, whether acting by himself or through some other individual: Provided, however, that an individual who engages in a covered communication on behalf of an organization of which he is an officer, director or paid employee shall not be considered a "lobbyist" within the meaning of this subsection;

An Organization:

(1) Which is retained for consideration, other than personal travel expenses, and which engages in one or more covered communications or covered solicitations in any quarterly filing period, acting either through its own officers, directors or paid employees or through any other organization acting for it.

(2) Which directly engages on its own behalf in 12 or more covered communications or solicitations in a quarterly filing period: Provided, however, that in determining whether an organization is a lobbyist within this paragraph, no communication by any organization acting solely on its own behalf shall be included if it occurs between an officer, director or paid employee of the organization and a Congressman representing, in whole or in part, a State in which such officer, director or paid employer resides, or any officer or employee of the Legislative Branch who is on the personal staff of such a Congressman.

(3) Through its officers, directors or paid employees, or through any individual or organization retained for consideration, except personal travel expenses, for such purpose, engages in one or more covered solicitations which all refer to the same issue or issues before the Congress and which reach, or may reasonably be expected to reach, a total of 100 or more persons in any quarterly filing period.

(4) Which, through its officers, directors or paid employees, or through any organization or individual retained for consideration, except personal travel expenses, for such purposes, engages in one or more covered solicitations which all refer to the same issue or issues before the Congress and which reach, or which may reasonably be expected to reach, in any quarterly filing period, 50 of more officers, directors or paid employees of the organization, or the officers or directors or paid employees of 12 or more organizations with which the organization is legally affiliated.

APPENDIX B

Section 6. Records

(a) Each lobbyist, and each person who retains a lobbyist, shall maintain such records as the Comptroller General shall by regulation require to be maintained

as necessary and appropriate for the enforcement of this Act. Records required to be maintained pursuant to this section shall include, but not necessarily be limited to, all documents, correspondence, books of account, checks, vouchers, memoranda and other written material which reflect information required to be disclosed by this Act or which reflect, either directly or indirectly, that a person has engaged in activity which would render him subject to the provisions of this Act.

(b) Records required to be maintained pursuant to subsection (a) of this section shall be made available for inspection and audit by the Comptroller General at reasonable times, and such records shall not be exempt from such audit or inspection on the ground that they constitute privileged communications between attorney and client.

(c) Records required to be maintained pursuant to subsection (a) of this section, and testimony concerning them shall be subject to judicial subpoena without regard to the attorney-client privilege as incorporated in Rule 501 of the Federal Rules of Evidence.

Section 14. Sanctions

* * * * * * *

(d) Any person who knowingly and willfully destroys, mutilates, obliterates, falsifies or conceals or who knowingly and willfully attempts to destroy, mutilate, obliterate, falsify or conceal, records which are required to be kept pursuant to section 6 of this Act, shall be fined not more than $10,000, or imprisoned for not more than 5 years, or both.

[Subsequent to the hearing the following letter was forwarded to Chairman Ribicoff by Mr. Keeney:]

DEPARTMENT OF JUSTICE,
Washington, D.C., November 28, 1975.

HON. ABRAHAM RIBICOFF,
U.S. Senate, Washington, D.C.

DEAR SENATOR: I had intended during my testimony before the Senate Government Operations Committee on November 4, 1975, concerning S. 2477 to comment on the criminal culpability provisions set forth in the bill, a matter not addressed in the written statement I submitted on behalf of the Department of Justice. Since my oral presentation neglected to touch upon this issue, I am taking the liberty of forwarding this letter on the subject in order that you and the other members of the Committee may be aware of our views. I would ask that the letter be inserted in the record of the Committee's hearings on S. 2477.

As you know section 13(b) of the bill makes it a felony for any person "knowingly and willfully" to fail to file a required registration statement under section 5, to fail to keep a record required under section 6, to fail to file a report required under section 7, or to falsify or cover up any material fact in connection with the foregoing obligations.

The term "willful" has been given various meanings by the courts in the context of criminal statutes. See, *e.g., Screws* v. *United States*, 325 U.S. 91 (1945); *Spies* v. *United States*, 317 U.S. 492 (1943); *United States* v. *Murdock*, 290 U.S. 389 (1933). Because of its inexactitude, the draftsmen of the Model Penal Code, as well as of S. 1, the pending bill to revise the federal penal code, have opted to discard the term "willful" altogether from criminal statutes. Although, pending such a systematic revision of the federal criminal laws, we have no strong objection to the continued use of "willful" in this statute, we do think it important that the Congress indicate more precisely in the legislative history what mental state is thereby contemplated.

We presume that, by the word "knowingly", is intended the common *mens rea* requirement in criminal laws that the person have been aware of the nature of his conduct (for example, that he was failing to file a report or to register), without any requirement of knowledge that he was violating the law (or even knew of its existence) in so doing. See *United States* v. *International Min'ls Corp.*, 402 U.S. 558 (1971). That raises the question whether the conjunctive use of the term "willfully" in section 13(b) is meant to import such a requirement of knowledge of the law, or possibly even beyond that, of an intent to act so as to violate the law or to act with a bad purpose, as the term "willfully" has sometimes been construed in other statutes.

We believe that such a culpability standard is too stringent. In our view, criminal liability should attach under S. 2477 if a person, knowing the nature of his conduct, acts in reckless disregard of the fact that his failure to register or to file or maintain a record or report might violate the law. By reckless we mean a conscious awareness but disregard of the risk that the act was legally required, with the nature of the risk being such that its disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the circumstances. We believe that a person who acts in such disregard must be deemed to have assumed the risk of criminal liability should his judgment turn out to have been mistaken. To require any higher degree of *scienter*, such as a purpose to violate the law, would render the offense very difficult to prove, and might have the unsalutary effect of encouraging a lack of compliance with the law. Under the interpretation of "willfully" that we propose, a person who fails to seek an advisory opinion under section 11(a) of the bill as to the applicability of the registration, record-keeping, or reporting requirements of the Act, or who disregards such opinion when received might be liable to criminal prosecution under section 13 notwithstanding that he personally believed that his conduct was lawful.

We hope that these views will commend themselves to the Committee. Whether or not the Committee concurs in our interpretation, we urge that the Committee do indicate in its Report on the bill what sort of criminal intent is contemplated under section 13, so as to avoid unnecessary and protracted litigation when the bill is enacted.

Sincerely,

JOHN C. KEENEY,
Deputy Assistant Attorney General, Criminal Division.

Chairman RIBICOFF. Mr. George Mickum, please. You may proceed, sir.

TESTIMONY OF GEORGE MICKUM, CHAIRMAN, COMMITTEE ON REGULATION OF LOBBYING, BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

Mr. MICKUM. Senator Ribicoff, Senator Brock, my name is George Mickum, I am chairman of the Committee on Federal Regulation of Lobbying of the Bar Association of the District of Columbia. I am a partner in the firm of Steptoe & Johnson, with offices at 1250 Connecticut Avenue NW., Washington, D.C. On behalf of my committee I wish to thank you and the members of this committee for the opportunity afforded us to appear before you to present the views of the Bar Association of the District of Columbia, concerning the several bills before you concerning the regulation of lobbying.

Because we consider S. 2477 and S. 815 to be the primary bills before you, we are restricting our comments to them in view of the short time we had to prepare for this appearance. Because we practice here in Washington where the Congress is located, many members of the bar association are called upon frequently to advise clients concerning obligations under the Lobbying Act. Many Washington lawyers advise and consult with their clients on legislative issues and frequently represent them in advocating their position before the Congress, and to that extent we engage in lobbying. Consequently, members of this bar will be vitally affected by legislation relating to lobbying.

Now, I only obtained a copy of the Department of Justice's prepared statement a few moments before this hearing began, and I haven't had a chance really to digest it, but I heard some oral comments that shocked me as a lawyer—and it surprised me that a fellow lawyer would make them. I am even more puzzled, if the committee will per-

mit me, to hear the Department of Justice taking the position it has taken today, when the very same provisions, the enforcement provisions and recordkeeping provisions, which are embodied in S. 2477 are in litigation under the Federal Election Campaign Act—I am sorry, I don't have the right name.

The Department of Justice in the Supreme Court of the United States today, it appears to me at least, would be contesting the constitutionality of those very same provisions. As I understand it and read them, the enforcement provisions in S. 2477 were lifted bodily out of the act I just mentioned. And, as I indicated, the constitutionality of those provisions is being litigated by the Department of Justice in the Supreme Court.

Now, I really can't go beyond that, other than to say that at page 105 of the brief they filed before the Supreme Court of the United States, they say:

> In sum, the commission is dominated by the Congress, so much so that we think it fair to say that it is an arm of Congress, or a legislative agency in much the same manner that the General Accounting Office is a legislative agency.

Then they ask a rhetorical question.

> Can a body so constituted exist under our Constitution? Can an agency subservient to Congress make legislative rules? Can such an agency possess law-enforcement power when executive authority is reserved to another branch by Title 2?

They go on.

> These questions about the composition and duties of the Commission concern the allocation of power in our form of government, an allocation reached through some of the most basic compromises of the Constitutional Convention. Thus far, more is at stake than the particular composition and powers of the Commission. If the Commission constitutionally can exercise the powers bestowed upon it, it may set the example for other agencies yet to be created and the pattern for a process that will work a fundamental alteration in the separation of functions and the system of checks and balances between the branches of government that the framers believed critical to the success of this Republic.

Now, I must say—I repeat, I have not read their statement in full, but I suggest that there is some kind of an inconsistency between the testimony that has been given this morning and the position being taken in court.

Now, if I may pursue my prepared remarks, in light of this vital interest, the bar association formed a committee in 1966 to analyze proposed amendments to the 1946 Regulation of Lobbying Act. Since that time, the committee has presented its views before congressional committees which were studying proposals to amend the 1946 law. We have worked closely with staff members of both the House and Senate in an attempt to assist in the development of legislation which would provide for the effective regulation of lobbying while not unconstitutionally interfering with the rights of freedom of speech, the right to petition for redress of grievances and the right to counsel.

Again, if I may digress, the suggestion that the reporting and recordkeeping requirements in the case of lawyers be enlarged and that the privilege that exists between lawyers and their clients be waived or written out of existence for lobbying is appalling. I would suggest that it does create a very serious question as to whether the right to counsel, guaranteed by the Constitution, can be so waived.

Our experience as a result of these endeavors has certainly served to reaffirm our previously held conviction that when drafting statutes which involve fundamental constitutional rights, it is always difficult to locate the line between a constitutional and an unconstitutional interference with liberty. In *U.S.* v. *Harriss*, the 1946 Lobbying Act was narrowly upheld only after being substantially "construed" by the Supreme Court. And we should remember that *Harriss* was decided before most of the Supreme Court cases which articulated the very strict standards imposed upon interferences with fundamental rights today. We know at the very least that any law directly attempting to regulate freedom of speech must be supported by a strong, if not compelling, governmental interest. We recommend, accordingly, that you examine each provision of this bill, and each provision offered in the form of amendments to it, and make certain that each such provision can support a compelling need.

We also know that any statute affecting first amendment rights must be drafted as narrowly as possible to achieve the goal it seeks to achieve, without casting its net too broadly. And unless the law is as clear as careful draftsmanship can make it, reasonable people cannot know what is required, which may render the law unconstitutionally vague. I might add, I think the reason the Supreme Court construed the existing act in the *Harriss* case was because it was so vague they sought to attach some certainty to it.

Our committee is pleased to note the attempt in S. 2477 to eliminate a number of the constitutional and practical problems which have characterized many of the other lobbying bills considered by the Congress over the past several years.

Although this bill goes further than one we would have written, the draftsmanship of S. 2477 reflects countless hours of work by your committee staff, efforts we wish to commend most sincerely. On behalf of the bar association, we also want to express our appreciation for the opportunity which was afforded us to consult with your committee staff, who, even when strongly disagreeing with some of the points we were trying to make, graciously listened to and considered our suggestions. Indeed, we were very pleased to note that a number of these suggestions were incorporated in S. 2477.

One very fundamental problem, however, endangers the entire bill. Regretfully, the time pressure we were under during our consultations with your staff did not permit us to give sufficient attention to the Comptroller General's powers as to recordkeeping, reporting, and enforcement sections during those meetings.

The Comptroller General is given the power to require a law firm, an organization or an individual who lobbies, to maintain very detailed records which are directly related to lobbying activities. These detailed requirements in the bill are much too onerous and may themselves abridge fundamental rights. In addition, the Comptroller General is given the authority to require the keeping of any other records that he may "prescribe as necessary for the effective implementation of the act." Here, where fundamental rights are involved, so broad a delegation could generate serious problems for lawyers whose records are traditionally privileged. Such records would be subject to examination by the GAO at any time. Under the enforcement provisions, moreover, the GAO can audit a firm's books

and require the production of documents which may have nothing to do with lobbying. We are opposed to this too broad, if not limitless, grant of power to the Comptroller General and have in the supplement to my statement made some concrete suggestions for revision of the bill.

Under the bill in its present form, if the Comptroller General wanted to establish, for example, that the moneys reported with respect to lobbying activities for a particular client in fact represented the total received for such purposes, he might require maintenance of and access to all records relating to that client. The Comptroller General might also require access to all records concerning every client in order to verify that no lobbying activities went unreported.

The establishment and maintenance of a separate recordkeeping system related only to lobby would be extremely burdensome and expensive. And it would not solve the problem, since the GAO could nevertheless seek all the records in order to determine that what is presented to them is in fact all there is. The inclusion of such powers in this legislation would expose to review records which might endanger a client's right to privacy and risk invasion of the constitutional privileges against self-incrimination and the right to counsel. Moreover, if it really is a purpose of the bill to provide for public disclosure, the problems I have adverted to will be compounded.

Let me illustrate what I mean. Assume that someone comes to me in complete confidence to discuss a possible divorce; his wife knows nothing about it. He just wishes to know what his financial and other rights would be in the event that he later decided to seek a divorce. Needless to say, if his wife learned of this contact, the ramifications could be most serious. And then let us assume that he also asked my advice about a very sticky income tax matter, one where he is really not sure whether he might or might not have violated the law. And then let us say that he also asked me to represent him as a businessman for the purpose of explaining to a congressional committee that the impact of a particular provision of proposed law might be unduly burdensome to his business—that is, he retains me to lobby.

I, in turn, duly report under the Lobbying Act as to what legislative issues I represented him on and how much he paid my firm to make lobbying communications. Then let us say that the GAO wants to be sure that I in fact reported all income relating to the lobbying I did for him, and that I did not underreport the lobbying income by attributing it to the time spent on his divorce and income tax matters. I would not be in a position to offer to show the GAO records which relate to the lobbying because we don't prepare records that way and I know of no law firm that does.

Even if we developed a special computer program for lobbying, recordkeeping, and reporting, the Comptroller General would naturally wish to see the records relating to all of the work I did for a client in order to be sure that what I am reporting is complete. It is doubtful that any of us today would be completely sanguine about exposing to GAO investigators information of such highly private nature. We are all aware that leaks have developed recently in some very confidential places.

The bottom line would be that a lawyer, rather than risk the rights of his client, would simply refuse to represent that client with

respect to legislation. And because of this "chilling" factor, communications protected by the first amendment would be seriously impeded, thus reducing the flow of information needed by the Congress for effective legislation.

If I may, I would like to hand up to the committee a sample of a record that we in my firm retain and which is similar to that maintained by most major law firms and talk about it for a few minutes, if I may.

Now, in order to avoid the very problems of privilege that I have already adverted to, it is a spurious client and the cases are spurious, but they represent types of cases which we have for many hundreds of clients.

Now, I want to point out that this is only one of the records that we keep. This is an unbilled time report for the month of September, ending September 30, 1975. You will see that each case for that client has a separate number. No. 001 is general, No. 002 is confidential tax inquiry, No. 004 is a possible embezzlement. Now, the very first thing that this record would indicate to the Comptroller General's investigator is: Where is case No. 003?

Now, case No. 003 could be active or it could be closed. This would only indicate, from this record, that there was no time spent during that month on that case. Similarly, we skip case No. 005 and then we get to No. 006, the Scotland Yard matter. Now, that may seem a little silly, but we actually have a case involving police action by a foreign government. When you skip No. 005, you raise the same problem, which will require the GAO to go into other records to see what they were, what was the case and what it involved.

Then we get to case 007, antitrust potential acquisition. That could be anything from a criminal matter involving the Department of Justice—Lord knows. But none of these things should be open to the examination of people outside of the law firm. These are the basic framework of a lawyer's life—I mean, if we can't receive information in confidence and can't give advice in confidence, our function is severely limited. In fact, I would suggest that we would have little reason to exist.

Chairman RIBICOFF. Do I understand that you object to the blanket authority of the Comptroller General? Do I further understand that in order for the Comptroller General to get these records, he has to use a subpena process and a court procedure? Would that be satisfactory or do you object to that, too?

Mr. MICKUM. We think as a minimum, Senator Ribicoff, that there must be a serious restriction placed on the Comptroller General's right to acess to records. We suggested the possibility that the subpena—confining his ability to get into records to the use of a subpena, which would give us the right, for example, to go to the judge and say, your honor, here are confidential matters, and we could have our records interviewed in camera by the judge—and the normal means by which lawyers protect confidence, even in discovery of litigated cases, would be available. As it now stands, there is no such protection available. The Comptroller General by a special or general order could issue an order and compel the production of anything he asked for.

Chairman RIBICOFF. Let me ask you, if I may, how many attorneys of the D.C. bar do you believe engage in lobbying?

Mr. MICKUM. I really couldn't give you an estimate. We have 87 lawyers in my law firm in Washington—and I would say on occasion, a very rare occasion, some of them do engage in lobbying on a limited basis.

Chairman RIBICOFF. Do you register?

Mr. MICKUM. Oh, yes. I might say I feel rather like a fish out of water, Senator Ribicoff—I have never in my life lobbied. The only thing I have ever been on the Hill about is the lobbying law—and I don't get paid for it.

Chairman RIBICOFF. How much money do you think lawyers in Washington earn by being lobbyists? Is it lucrative?

Mr. MICKUM. I do not think it is too significant, not certainly from our experience, Senator. It is more or less a tangential thing. Two good little illustrations appear on my little sample, Senator—case No. 008, S. 2477 inquiry, and No. 013, Tax Reform Act of 1975. In most cases with which I am familiar—and these look like lobbying type things, that is the reason I picked them out—our function would be to advise our clients as to the legal impact of those things. And how they should aproach coming to see you themselves.

On a rare occasion, we might accompany our client to see you, but more often than not we simply assist them as lawyers to make their own presentations. But I do have to admit that there are occasions when I might, for example, accompany my client to see you.

But I don't really think the amount of money involved by lawyers representing their clients in lobbying situations is great. I don't want to be held to that, because I honestly don't know. I speak only from our experience.

But I would suggest to you that this little illustration shows how a pinpoint inquiry into a specific situation in our law firm would burgeon. And I submit to you that it is a very dangerous situation but one that is the kind of a situation where we have to be satisfied with something less than protection, or perfection. I don't think that any law firm is going to lie in making its reports, I don't think any lawyer is going to lie in making his reports. And I think that to give the Comptroller General the power to go rummaging around in our records without regard to the privileged situation that exists between lawyers and clients—it is just wrong, it is just wrong. And I believe we will litigate it if it is so enacted.

Now, we have, in the supplementary materials submitted with this statement, made some specific suggestions about how the bill should be amended to remove these constitutional infirmities. The Comptroller General's access to internal records must be severely restricted. Our proposed amendments to the bill would permit such access only pursuant to a subpena. Thus, we propose elimination of the Comptroller General's authority to obtain records by general or specific orders. If the Comptroller General must issue subpenas, and he attempts to obtain records which could invade privacy and/or breach the attorney-client and other privileges, the organization or individual could utilize the due process safeguards which are built into the subpena procedure.

S. 2477 stands in contrast to its predecessor, S. 815, introduced previously during this Congress. It is the view of our committee that that bill is, on its face, flagrantly unconstitutional. It suffers from virtually every malady ever described in Supreme Court opinions dealing with

the first amendment. It is overly broad; it is vague; and, most significantly, it would chill and indeed actively discourage the very communications the first amendment was intended to protect. S. 2477, on the other hand, reflects an attempt to remove many of the constitutional infirmities inherent in S. 815.

Another significant respect in which the views of our committee diverge from those represented by S. 2477 relates to the governmental justification which must underlie a bill of this nature. The only governmental interest of which we are aware that would sustain a law directly abridging fundamental rights, as any lobbying bill does, was that described in *U.S.* v. *Harriss*. The court in *Harriss* based its narrow holding on a finding that Congress as an institution has a right and, indeed, a need, to know the source of information it receives and whether or not the person conveying that information has been paid to do so. The court said:

> Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressure. . . . [To forbid Congress from requiring disclosure of lobbying activities] would be to deny Congress in large measure the power of self-protection. And here Congress has used that power in a manner restricted to its appropriate end.

In that context, as I have already pointed out, the Supreme Court very narrowly construed the 1946 act. There is nothing in the 1946 act that says lobbying encompasses only direct contact with Members. That act specifically attempted to cover indirect lobbying and it was written out by the Supreme Court. I repeat the suggestion that we are in a very unchartered area here. It is our committee's view that we want a good and enduring bill relating to lobbying. And if we give counsel, it is to go cautiously and no further than is necessary to meet the needs of Congress.

Chairman RIBICOFF. As I understand your position, that while you think there should be certain corrections, you do feel that the time has come for a good definitive lobbying bill?

Mr. MICKUM. We have for 10 years, Senator.

Chairman RIBICOFF. From your experience, is that generally the feeling of the bar as a whole in Washington, from your experience?

Mr. MICKUM. Well, it is the feeling of the Bar Association.

Chairman RIBICOFF. Does the Bar Association support a modification and a change to see if we can get a definitive lobbying law?

Mr. MICKUM. That is correct. Our charter was given us by the governors of the Bar Association and, basically, we are committed to a law that is even-handed and applies to everyone similarly situated, to one that is clear enough that everyone affected can know that he is affected, to one which doesn't lend itself, as the present one does, to forcing a representative of an unpopular cause to register, whereas someone representing a popular cause feels no particular need to do so, because the law isn't enforced or enforceable.

We want to see that everybody is treated the same way. We are also committed to the need to regulate grassroots lobbying, Senator. We think that without that the lobbying bill would be one armed, to say the least.

Now, Harris doesn't suggest that a public-disclosure purpose would be sufficient to warrant the kind of abridgement found in any bill attempting to regulate lobbying activities. The distinction between a congressional right to know and a public right to know is significant since every provision in a bill affecting first amendment rights must be tested against its relationship to the achievement of a compelling congressional purpose. The Supreme Court in *Harriss* considered Congress right of self-protection as an institution to be an interest sufficiently important to warrant some limited, but, as yet, not fully defined, abridgement of freedom of speech and petition. To the extent, therefore, that the provisions of a lobbying bill reasonably support that purpose, they could, at least under *Harriss*, be considered to meet constitutional requirements.

However, S. 2477 includes as a stated purpose public disclosure. Indeed, it is public disclosure that appears to be the overriding purpose of S. 2477's predecessor, S. 815, and the provisions of that bill seem principally aimed at disclosure for disclosure's sake. There is no case upholding an abridgement of free speech which would support a rationale of exposure for exposure's sake. Indeed, from the 1950 cases relating to subversive activities, we know that not even a Congressional investigating committee can require such a disclosure.

Assuming, arguendo, however, that provisions based on public disclosure for disclosure's sake would be held constitutionally permissible in addition to a Congressional right to know, S. 2477 contains a significant internal inconsistency. It exempts communications made by any official of the Federal Government, or of State and local governments. It is the view of our committee that this exemption will cause serious distortions of the lobbying picture presented to the public.

Chairman RIBICOFF. In other words, you disagree with the Attorney General's Office on this point?

Mr. MICKUM. I believe almost a hundred percent, if I heard him correctly, Senator Ribicoff. We feel that if it is a function of this bill to make a public disclosure at a very minimum, if you are going to abridge freedom of speech, it has to be a balanced disclosure. I think we all know that a significant amount, if not a majority, of lobbying that is carried on here involves governmental representation. It would be grievously unfair, in our view, to single out the private sector of the economy, and be able to say, oh, look how much money they spent lobbying—without balancing that by showing how much of the taxpayers' money is involved in lobbying. I submit that would be a significant amount of money.

Chairman RIBICOFF. The legislative process is a cooperative one between the Executive Branch and the Legislative Branch. Not all legislation, but a major part of legislation, is sent up by the Executive Branch. It is public. You know who is sending it up. There is a purpose and statement given—and the Executive Branch and the Legislative Branch often work together—not in secret—it is an open proposition.

You don't think there is a distinction between private lobbying and the Executive Branch, which is part of the legislative process, in the final analysis?

Mr. MICKUM. Well, I agree that there is a distinction, but I would also submit to you, Senator, that there is much lobbying that does

not fall into the category—much Government lobbying—that does not fall into the category you have described.

Now, you may have a definitional problem in determining what is what, but I stand my ground on the proposition that if you ignore completely governmental lobbying, the picture presented to the public is a total distortion—and very unfair.

Now, I think perhaps—and I would add that we do not object to the elimination of Government lobbying from S. 2477, I should make that clear—but what we do say is that we object to the purpose of this bill being public disclosure. We feel that to the extent that it has spoken, the Supreme Court has said that your right to abridge the freedom of speech and freedom of petition by enacting a law can be supported by a compelling need of Congress to know, and only by that. To go further and to convert a law regulating lobbying to a disclosure-for-disclosure's-sake law, is, in our opinion, a very risky business. I hope I have made myself clear. I am saying that if it is a public-disclosure law, then there has to be a more balanced presentation than is presently provided for.

Now, we do have a case, *Bradley* v. *Saxbe*, which was adverted to earlier today, in which, among other things, the court held that governmental representatives have to be presumed to speak for the public interest. That was a case of statutory construction in which the court held that existing law does not require the registration of local government lobbyists. But such a requirement would not be inconsistent with the express public information purpose found in the bills pending before you. Excluding governmental lobbyists from coverage under this bill will exclude reporting of a significant source of lobbying communications, and will risk seriously misleading the public about the true nature and extent of all lobbying activities. We do not believe that *Saxbe* commands an exemption for Government lobbyists—unless the only constitutional basis which would sustain any lobbying bill is the Congressional need to know discussed earlier.

With respect to lobbying by the Federal executive branch, moreover, it is the view of our committee that such extensive and pervasive efforts should be recorded along with similar efforts by nongovernmental entities. And we believe that the Congress should have some idea of the extent to which tax dollars are supporting the lobbying process—18 U.S.C., section 1913 prohibits the use of appropriated funds for lobbying and subjects officers and employees of the United States or any agency or department thereof to severe penalties, criminal and civil, for a violation.

Chairman RIBICOFF. May I interrupt? Senator Percy and I have a long-standing comitment downtown, and we have to leave at 12:15. We have read your statement and we would like to submit questions, if desired, if it is all right with you. We have one more witness this morning.

Would you be able to accommodate us, Mr. Mickum?

Mr. MICKUM. Yes, sir.

Senator PERCY. Mr. Mickum, we appreciate that very much. I just have one question.

You note in your testimony that the provisions of S. 2477 which authorize the Comptroller General to issue cease-and-desist orders may violate constitutional due process requirements.

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Should there be such an intermediate remedy, if appropriate protections are provided, or should the Comptroller General be limited to seeking court action if he cannot obtain compliance through informal methods?

Mr. MICKUM. I believe that he should be required to seek court action, Senator Percy. It does not appear in my prepared remarks, but in the addendum—that provision strikes me as very similar to the U.S. attorney who presented the case to the grand jury, prosecuted it, then taking over the functions of the jury and requiring the defendant to prove that he was innocent, all of which is alien to our way of life.

If I may, Senator Ribicoff, just make one concluding observation. Whether any of our other suggestions are accepted, we do believe that a single Member of Congress ought not to be able to trigger an investigation by the Comptroller General, we think at a minimum it ought to be a committee.

Thank you very much.

Chairman RIBICOFF. In other words, your feeling is that a majority vote of the committee must allow the investigation to go forward?

Mr. MICKUM. Most certainly, Senator. It seems to me that we would expose not just lawyers, but any person who represented an unpopular cause to absolute persecution. You would have the Comptroller General romping around in his records all the time.

Chairman RIBICOFF. In other words, I understand you, along with the Bar Association, are available for consultation with our staff.

Mr. MICKUM. We have been and will continue to be.

Chairman RIBICOFF. Thank you very much. We are very serious about this legislation. I think all of us are concerned to get a fair and balanced bill that does the job without infringing in any way upon the constitutional rights of any individual. I mean, this is our objective. It is very complex.

Mr. MICKUM. Thank you, Senator.

Chairman RIBICOFF. Thank you, Mr. Mickum.

[The prepared statement of Mr. Mickum, with attachments, follows:]

STATEMENT OF GEORGE B. MICKUM, III, CONCERNING FEDERAL REGULATION LOBBYING ON BEHALF OF THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

Mr. Chairman and Members of the Committee: I am George B. Mickum, III, Chairman of the Committee on Federal Regulation of Lobbying of the Bar Association of the District of Columbia. I am a partner in the firm of Steptoe & Johnson, with offices at 1250 Connecticut Ave., N.W., Washington, D.C. On behalf of my committee I wish to thank you and the Members of this committee for the opportunity afforded us to appear before you to present the views of the Bar Association of the District of Columbia, concerning the several bills before you concerning the regulation of lobbying. Because we consider S. 2477 and S. 815 to be the primary bills before you, we are restricting our comments to them in view of the short time we had to prepare for this appearance. Because we practice here in Washington where the Congress is located, many members of the Bar Association are called upon frequently to advise clients concerning obligations under the Lobbying Act. Many Washington lawyers advise and consult with their clients on legislative issues and frequently represent them in advocating their position before the Congress, and to that extent, engage in lobbying. Consequently, members of this Bar will be vitally affected by legislation relating to lobbying.

In light of this vital interest, the Bar Association formed a committee in 1966 to analyze proposed amendments to the 1946 Regulation of Lobbying Act. Since

that time, the committee has presented its views before congressional committees which were studying proposals to amend the 1946 law. We have worked closely with staff members of both the House and Senate in an attempt to assist in the development of legislation which would provide for the effective regulation of lobbying while not unconstitutionally interfering with the rights of freedom of speech, the right to petition for redress of grievances and the right to counsel.

Our experience as a result of these endeavors has certainly served to reaffirm our previously held conviction that when drafting statutes which involve fundamental constitutional rights, it is always difficult to locate the line between a constitutional and an unconstitutional interference with liberay. In *U.S.* v. *Hariss*,[1] the 1946 Lobbying Act was narrowly upheld only after being substantially "construed" by the Supreme Court. And we should remember that *Hariss* was decided before most of the Supreme Court cases which articulated the very strict standards imposed upon interferences with fundamental rights today. We know at the very least that any law directly attempting to regulate freedom of speech must be supported by a strong, if not compelling, governmental interest.

We recommend that you examine each provision of this bill, and each provision offered in the form of amendments to it, and make certain that each such provision can support a compelling need.

We also know that any statute affecting first amendment rights must be drafted as narrowly as possible to achieve the goal it seeks to achieve, without casting its net too broadly. And unless the law is as clear as careful draftsmanship can make it, reasonable people cannot know what is required, which may render the law unconstitutionally vague. Our committee is very pleased to note the attempt in S. 2477 to eliminate a number of the constitutional and practical problems which have characterized many of the other lobbying bills considered by the Congress over the past several years.

Although this bill goes further than one we would have written, the draftsmanship of S. 2477 reflects countless hours of work by your committee staff, efforts we wish to commend most sincerely. On behalf of the Bar Association, we also want to express our appreciation for the opportunity which was afforded us to consult with your committee staff, who, even when strongly disagreeing with some of the points we were trying to make, graciously listened to and considered our suggestions. Indeed, we were very pleased to note that a number of these suggestions were incorporated in S. 2477.

One very fundamental problem, however, endangers the entire bill. Regretfully, the time pressure we were under during our consultations with your staff did not permit us to give sufficient attention to the Comptroller General's powers as to the recordkeeping, reporting and enforcement sections during those meetings.

The Comptroller General is given the power to require a law firm, an organization or an individual who lobbies, to maintain very detailed records which are directly related to lobbying activities. These detailed requirements in the bill are much too onerous and may themselves abridge fundamental rights. In addition, the Comptroller General is given the authority to require the keeping of any other records that he may "prescribe as necessary for the effective implementation of the Act." Here, where fundamental rights are involved, so broad a delegation could generate serious problems for lawyers whose records are traditionally privileged. Such records would be subject to examination by the GAO at any time. Under the enforcement provisions, moreover, the GAO can audit a firm's books and require the production of documents which may have nothing to do with lobbying. We are opposed to this too broad, if not limitless grant of power to the Comptroller General and have in the supplement to my statement made some concrete suggestions for revision of the bill.

Under the bill in its present form, if the Comptroller General wanted to establish, for example, that the monies reported with respect to lobbying activities for a particular client in fact represented the total received for such purposes, he might require maintenance of and access to all records relating to that client. The Comptroller General might also require access to all records concerning *every* client in order to verify that no lobbying activities went unreported.

The establishment and maintenance of a separate recordkeeping system related only to lobbying would be extremely burdensome and expensive. And, it would not solve the problem since the GAO could nevertheless seek all the rec-

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[1] 347 U.S. 612 (1954).

ords in order to determine that what is presented to them is in fact all there is. The inclusion of such powers in this legislation would expose to review records which might endanger a client's right to privacy and risk invasion of the constitutional privileges against self-incrimination and the right to counsel. Moreover, if it really is a purpose of the bill to provide for public disclosure, the problems I have adverted to will be compounded.

Let me illustrate what I mean. Assume that someone comes to me in complete confidence to discuss a possible divorce; his wife knows nothing about it. He just wishes to know what his financial and other rights would be in the event that he later decided to seek a divorce. Needless to say, if his wife learned of this contact, the ramifications could be most serious. And then let us assume that he also asked my advice about a very sticky income tax matter, one where he is really not sure whether he might have violated the law. And then let us say that he also asked me to represent him as a businessman for the purpose of explaining to a congressional committee that the impact of a particular provision might be unduly burdensome to his business—that is, he retains me to lobby.

I, in turn, duly report under the Lobbying Act as to what legislative issues I represented him on and how much he paid my firm to make lobbying communications. Then let us say that the GAO wants to be sure that I in fact reported all income relating to the lobbying I did for him, and that I did not under-report the lobbying income by attributing it to the time spent on his divorce and income tax matters. I would not be in a position to offer to show the GAO records which relate to the lobbying because we don't prepare records that way. But even if we developed a special computer program for lobbying, recordkeeping and reporting, the Comptroller General would naturally wish to see the records relating to *all* of the work I did for a client in order to be sure that what I am reporting is complete. It is doubtful that any of us today would be completely sanguine about exposing to GAO investigators information of such a highly private nature. We are all aware that leaks have developed recently in some very confidential places.

The bottom line would be that a lawyer—rather than risk the rights of his client—would simply refuse to represent that client with respect to legislation. And because of this "chilling" factor, communication protected by the first amendment would be seriously impeded, thus reducing the flow of information needed by the Congress for effective legislation.

In the supplementary materials submitted with this statement, we have made some specific suggestions about how the bill should be amended to remove these constitutional infirmities. The Comptroller General's access to internal records must be severely restricted. Our proposed amendments to the bill would permit such access only pursuant to a subpoena. Thus, we propose elimination of the Comptroller General's authority to obtain records by general or specific orders. If the Comptroller General must issue subpoenas, and he attempts to obtain records which could invade privacy and/or breach the attorney/client and other privileges, the organization or individual could utilize the due process safeguards which are built into the subpoena procedure.

S. 2477 stands in contrast to its predecessor, S. 815, introduced previously during this Congress. It is the view of our committee that that bill is, on its face, flagrantly unconstitutional. It suffers from virtually every malady ever described in Supreme Court opinions dealing with the first amendment. It is overly broad; it is vague; and most significantly, it would chill and, indeed, actively discourage the very communication the first amendment was intended to protect. S. 2477, on the other hand, reflects an attempt to remove many of the constitutional infirmities inherent S. 815.

Another significant respect in which the views of our committee diverge from those represented by S. 2477 relates to the governmental justification which must underlie a bill of this nature. The only governmental interest of which we are aware that would sustain a law directly abridging fundamental rights—as any lobbying bill does—was that described in *U.S. v. Harriss*. The Court in *Harriss* based its narrow holding on a finding that Congress as an institution has a right and, indeed, a need to know the source of information it receives and whether or not the person conveying that information has been paid to do so. The Court said:

"Present day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly

evaluate such pressure. . . . [To forbid Congress from requiring disclosure of lobbying activities] would be to deny Congress in large measure the power of self-protection. And here Congress has used that power in a manner restricted to its appropriate end." [2]

Harriss does not suggest, however, that a public disclosure purpose would be sufficient to warrant the kind of abridgement found in any bill attempting to regulate lobbying activities. The distinction between a congressional right to know and a public right to know is significant since every provison in a bill affecting first amendment rights must be tested against its relationship to the achievement of a compelling congressional purpose. The Supreme Court in *Harriss* considered Congress' right of self protection as an institution to be an interest sufficiently important to warrant some limited, but, as yet, not fully defined, abridgement of freedom of speech and petition. To the extent, therefore, that the provisions of a lobbying bill reasonably support that purpose, they could, at least under *Harriss*, be considered to meet constitutional requirements.

This bill also includes, however, a stated purpose of *public* disclosure. Indeed, it is public disclosure that appears to be the overriding purpose of S. 2477's predecessor, S. 815, and the provisions of that bill seem principally aimed at disclosure for disclosure's sake. *There is no case upholding an abridgement of free speech which would support a rationale of exposure-for-exposure's sake.* Indeed, from the 1950 cases relating to subversive activities, we know that not even a congressional investigating committee can require such disclosure.[3]

However, assuming, *arguendo*, that provisions based on public "disclosure-for-disclosure's sake" would be held constitutionally permissible in addition to a congressional right to know, S. 2477 contains a significant internal inconsistency. The bill as drafted exempts communications made by any official of the federal government, or of state and local governments. It is the view of our committee that this exemption will cause serious distortions of the lobbying picture presented to the public.

If the constitutional basis of a lobbying bill were the congressional right to know the source of the information it receives, we agree that there would be little justification for including government lobbyists. But *if the intention of the legislation is to inform the public about the nature and extent of lobbying activities as a whole, a bill which does not cover government lobbying will necessarily produce a distorted picture.* This distortion would permit misrepresentations suggesting that while huge expenditures are made to lobby for so-called "special interests," no one is "defending" the so-called "public interest." As the court pointed out in *Bradley* v. *Saxbe*, governmental representatives at every level—federal, state and local—must be presumed to speak for the public interest.[4]

Saxbe was a case of statutory construction in which the court held that existing law does not require the registration of local government lobbyists. But such a requirement would not be inconsistent with the express *public* information purpose found in the bills pending before you. Excluding governmental lobbyists from coverage under this bill will exclude reporting of a significant source of lobbying communications, and will risk seriously misleading the public about the true nature and extent of *all* lobbying activities. We do not believe that *Saxbe* commands an exemption for government lobbyists—*unless* the *only* constitutional basis which would sustain any lobbying bill is the "congressional need to know" discussed earlier.

With respect to lobbying by the federal executive branch, moreover, it is the view of our committee that such extensive and pervasive efforts should be recorded along with similar efforts by non-governmental entities. And we believe that the Congress should have some idea of the extent to which tax dollars are supporting the lobbying process. 18 U.S.C. § 1913 prohibits the use of appropriated funds for lobbying and subjects officers and employees of the United States or any agency or department thereof to severe penalties (criminal and civil) for a violation. Not surprisingly, therefore, government employees do not register as lobbyists. But I would be very surprised if there is any Member serving on this committee who has not been extensively "lobbied" by government "lobbyists." If public disclosure is to be considered a principal purpose of

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[2] *Harriss* at 625–26.
[3] *See, e.g., Watkins* v. *United States*, 354 U.S. 178, 200 (1957).
[4] *Bradley* v. *Saxbe*, 388 F. Supp. 53, 57 (D.C. Cir., 1974).

this legislation, therefore, our committee would recommend the repeal of 18 U.S.C. § 1913 and the inclusion of federal government lobbying within any legislation covering lobbying activities.

Most of the lobbying regulation bills which have been introduced in the House and Senate in recent years recognize that it is not feasible to amend the existing law in a piecemeal fashion. The gaps which characterize the law, the narrowness of its definitions, and the vagueness which continues to plague it, all demand a fresh approach consistent with present day realities. We have, for example, long since passed the time when lobbying can accurately be characterized as direct, personal contacts with Members of Congress only, a definition which excludes contacts with the congressional staff members whose critical role in the development of legislation increases with each session of Congress. We must also remember, however, that the 1946 Act did not exclude such contacts; it was the Supreme Court which appeared to read them out of the law by referring to direct contacts with Members of Congress. Therefore, we cannot be completely sure that doing so will be held constitutional. Affording due weight to this prior history, however, we think that given the present day relationship of staff to this legislative function, it is worth the risk.

It is also clear that "lobbying" in reality includes soliciting members of the general public and particular groups sharing a common interest in order to cause such other persons in turn to communicate with Members of Congress for the purpose of influencing the legislative process. Coverage of "grassroots lobbying" cannot be overlooked in any legislation which is intended to be a comprehensive and useful aid to the Congress' right to know. Without it, we don't feel that the bill can do the job the Congress wants it to do. But the Supreme Court in *Harriss* also read coverage of such indirect lobbying out of the 1946 Act. So if we want the bill to fulfill Congress' right to know, Congress may have to take that congressional risk. What is needed, however, are carefully drafted provisions which are clearly calculated to produce information which the Congress needs to know in order to protect the integrity of its process, and yet does not require so much detail as to impose an unreasonable burden on the right of petition, speech and association. We believe that there are instances where S. 2477 does not meet that test. See pp. 4–5 of our Supplemental Statement.

With respect to administration and enforcement generally, our committee would favor administration by an appropriate committee of the Congress. This view is based on our continuing belief that a congressional "need to know" is the only clear, constitutional basis of which we are aware for regulating freedom of speech in the manner proposed in the various bills. Comparing S. 2477 with some of its predecessors, however, we would certainly prefer the approach which provides for enforcement by the Comptroller General rather than the creation of a new agency to administer the law, subject, of course, to the problems we pointed out earlier. At least the GAO is an arm of the Congress.

Absolutely essential to the enforcement of this law, however, is a requirement that all rulemaking, investigations and hearings must comply with the provisions of the Administrative Procedure Act. As lawyers, we consider those provisions the minimum that due process would require, and we urge you to be certain that the language of the bill makes this mandate clear.

We also agree that placing the principal reliance for enforcement on civil, rather than criminal, penalties is the most practical and sound approach. S. 2477 would impose criminal sanctions only in cases of knowing and willful violations of the Act. The civil penalties provided in the bill are very stringent. Furthermore, we believe that the language which expressly recognizes the possibility of inadvertent violations and provides the flexibility needed to deal with them, enhances the chances that the bill might sustain constitutional challenge.

Mr. Chairman, we are submitting for the record a supplementary statement which contains our more detailed, specific recommendations for amending S. 2477. There is one, however, to which I especially want to call your attention, that is, the provision on page 27 of the bill which permits any Member of Congress to trigger an in-depth GAO investigation of anyone who lobbies. In such an investigation, use of the subpoena power is specifically authorized. We believe that this provision represents an extraordinary opportunity for the harassment of lobbyists advocating unpopular views. We urge, therefore, that the bill be amended so that such a request can only be made by a Committee and not by an individual Member.

We certainly hope that this and the other suggestions contained in the supplemental statement will be viewed in the constructive spirit in which they are offered. We also wish to reiterate our support for the work of your committee. We believe the newest version of the lobbying proposals, that is, S. 2477, should form the basis for your committee mark-up; and we again stand ready to offer any assistance and cooperation your committee might find helpful as efforts continue to draft an effective, yet constitutionally sound, new lobbying regulation law.

SUPPLEMENTARY STATEMENT TO ACCOMPANY THE TESTIMONY OF GEORGE B. MICKUM, III, ON BEHALF OF THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

POWERS OF THE COMPTROLLER GENERAL

The powers which would be conferred on the Comptroller General by S. 2477 are so broad as to raise numerous constitutional problems. Recognizing that this legislation concerns the exercise of basic fundamental rights, the Committee on Federal Regulation of Lobbying of the Bar Association of the District of Columbia strongly urges that the discretion accorded the Comptroller General be circumscribed in any legislation that is to receive serious consideration. Following are some specific suggestions:

On page 23 of S. 2477, strike paragraph (1) of section 9(a) which would permit the Comptroller General to require the submission of reports and records by special or general orders without having to resort to a subpoena.

On page 24, strike paragraph (7) of section 9(a), which would permit the Comptroller General to formulate general policy with respect to the administration of the Lobbying Act. It is the Congress and not the Comptroller General which enunciates policy; it is the Comptroller General's obligation to implement that policy.

On page 24, line 25, after the words "Comptroller General" insert "and after notice and opportunity for a hearing." This would make clear the Congressional intent that any person charged with failure to obey a subpoena issued by the Comptroller General would be entitled to notice and opportunity for a hearing.

On page 25, line 1, strike "or order." This is a conforming amendment which is necessary in the event the Committee eliminates the grant of authority to the Comptroller General to issue general and special orders.

On page 25, strike subsection (c) of section 9, which provides for civil immunity for any person who discloses information at the request of the Comptroller General under the Act. This would invite breaches of confidential relationships and disclosure of privileged communications. This provision could be cited as authorizing and protecting violations of privilege and would, as applied in some circumstances, be unconstitutional. If the bill is amended to provide for the disclosure of information only pursuant to a subpoena, moreover, this provision would be unnecessary.

On page 27, line 4, strike "audits." The power of the Comptroller General to to conduct fishing expeditions into the internal records of organizations must be eliminated; access to records pursuant to a subpoena is appropriate to and adequate for the effective implementation of the Act.

On page 27, lines 5, 13 and 14, strike "conformity" and insert in lieu thereof "compliance." This change is recommended in order to make it absolutely clear that the bill requires strict adherence to the provisions of the Administrative Procedure Act.

On page 27, line 18, strike "Member" and insert in lieu thereof "committee." Allowing special investigations of lobbyists to be triggered by individual Members of Congress in an open invitation to the unconstitutional harassment of those holding unpopular views.

On page 29, line 10, after "powers" insert "under this Act." This addition will make clear that, in enforcing the Act, the Comptroller General may employ only those powers given him by this Act and may not utilize powers he may have under other statutes and which may not be subject to the Administrative Procedure Act.

On pages 30 and 31, strike subparagraph (A) of section 12(a)(3) and strike paragraph (4) of section 12(a) relating to the exercise of cease and desist powers by the Comptroller General. As written S. 2477 casts upon the person accused of violating its provisions the burden of proving that he has not done so. In

our view, this is unfair and of dubious constitutionality. As drawn, the bill permits the Comptroller General to reach a conclusion without a hearing or other procedural safeguard and require the subject of that conclusion to prove that the Comptroller General is wrong. This is like the U.S. Attorney who prosecutes an accused taking over the functions of the jury. Cf. *Morgan* v. *United States*, 298 U.S. 468 (1936). This legislation deals with a highly constitutionally sensitive area. Adding problems of due process and separation of powers serves only to exacerbate the already tenuous constitutionality of the bill.

BURDENSOME RECORDKEEPING AND REPORTING REQUIREMENTS

Several of the details relating to the recordkeeping and reporting requirements of S. 2477 are unnecessarily burdensome; others are simply unclear. The following suggestions are intended to alleviate some of these problems.

On page 15, subsection (d), the requirement that registrations (which are required to be quite detailed) must be amended within 15 days of any change should be deleted. Since lobbyists must report quarterly, this provision is primarily concerned with the timing of a submission and will substantially increase the number of filings, and will cause significant inconvenience to those having to file reports, while contributing little of any value to the purposes of the Act.

On page 16, section 6, the Comptroller General's discretion to prescribe what records are necessary to the Act should be tightly restricted so that it is clear such records are only those which relate to lobbying.

On page 17, subsection (b)(2), the language should be clarified to make sure that it applies only to individuals who actually communicate and not to any supporting staff who may have assisted in the preparation or delivery of such communications.

On page 20, line 23, the reference to a transcript of an oral lobbying solicitation suggests that this provision would apply only to broadcast lobbying solicitations which are paid advertisements. If this is the intent, it should be clarified. If, however, the provision covers any oral lobbying solicitation, requiring a transcript for communications other than those which are broadcast would be impracticable.

On page 21, lines 20–24, the question arises as to how a reporting organization would be able to verify the accuracy of expenses if such expenses are not reimbursed.

On page 22, subsection (f), what were fairly general references to issues, and categories of issues, in other provisions of the bill are made extraordinarily detailed requirements according to the provision. Subsection (f) should be deleted because it transforms other provisions of the bill into burdensome requirements to submit unnecessary detail which may thus violate the exercise of basic constitutional rights.

With respect to the reporting of income received by a lobbyist, which is defined to include an agreement to receive income, clarification should be provided concerning executory contracts. It is, as a practical matter, often very difficult to estimate how much income will be received for work not yet completed. Other ambiguities should also be clarified, such as how one values an "agreement to receive a service."

GENERAL

Following are a number of general suggestions affecting various provisions of S. 2477:

On page 5, paragraph (11), defining "issue before the executive branch," should be deleted. This legislation should relate only to issues before the Congress.

On page 8, line 9, strike "executive branch" and insert in lieu thereof "legislative branch." This provision concerns gassroots lobbying affecting the executive branch and is related to the definition discussed immediately above.

On page 6, line 4, strike the semicolon and insert ", or the General Accounting Office except with respect to its functions under this Act." Since the General Accounting Office is part of the legislative branch, communications made to the GAO for the purpose of influencing legislation should be covered by the Act, except for communications with respect to this Act.

On page 6, line 24, strike "a per diem allowance" and insert in lieu thereof "an allowance for not more than three days." This change is necessary in order to clarify that only actual expenses are exempted and that per diem allowances cannot be used as a substitute for salary for an indefinite period without being subject to the recordkeeping and reporting requirements.

On page 9, line 4, strike the semicolon and insert ", or any response thereto." This addition is necessary so that persons responding to requests for information from Members of Congress do not inadvertently thereby become "lobbyists."

On page 11, line 4, after the word "which" insert "as to any single issue" in order to clarify that a single solicitation does not come within this provision unless it reaches 500 or more persons, and that separate solicitations concerning different issues, where each such solicitation reaches fewer than 500 persons, cannot be aggregated to achieve the 500 necessary to bring such solicitations within this section.

On page 13, line 9, the words "affiliated organization" should be clarified and, indeed, included in the definition section of the bill. Definitions of "affiliated" can include the very loose sharing of common goals or a requirement of some degree of ownership or a requirement of control.

On page 18, paragraph (3), it is not clear whether there is any numerical requirement applicable to a lobbying solicitation made under this section of the bill. Solicitations reaching fewer than 500 persons should not be covered.

On page 26, subparagraph (4)(B) relates to compiling information on the lobbying activities of lobbyists who "share an economic, business, or other common interest." Who decides who has such common interests? Under this language, for example, Ford Motor Company might be linked with General Motors because they "share an economic interest" even though they might have taken opposite positions with respect to the legislation which was the subject of the lobbying.

On page 28, line 20, referring to advisory opinions, the committee should provide protection for persons awaiting an advisory opinion from investigations precipitated by the request for such an advisory opinion, at least during the pendency of the application.

On page 30, subparagraph (B), the jurisdictional bases raise the prospect of forum shopping. With respect to an organization which is a lobbyist, suits should be limited to the District of Columbia and such organization's principal place of business. If the jurisdiction extended to every district in which such an organzation "transacts business," companies could be subject to suits in virtually any district of the nation. This consideration should also be reflected on page 31, lines 19 and 20.

Chairman RIBICOFF. Mr. Alan Morrison, please. Mr. Morrison, again we have the problem of time, and I wonder if you could confine yourself to a résumé or take 10 minutes for your position and then give Senator Percy and I an opportunity to ask you a few questions.

TESTIMONY OF ALAN MORRISON, DIRECTOR OF LITIGATION, PUBLIC CITIZEN

Mr. MORRISON. I would be pleased to do that. I ask that my full statement be submitted into the record.

Chairman RIBICOFF. Without objection, the full statement will go into the record as if read at the conclusion of your testimony.

Mr. MORRISON. Senator, I would like to make one point of clarification about the testimony of my predecessor, Mr. Mickum. I think for the record it ought to reflect the fact that the Bar Association of the District of Columbia is a voluntary organization, comprised of several thousand lawyers, I believe. But it is not the same organization as the District of Columbia Bar, to which some 18,000 lawyers are required by court rule to belong.

And I think the record ought to reflect that the views expressed are only of a committee of a voluntary association, and not that of the unified bar, which by legislative command every lawyer must join. And the unified bar has not taken a position. It has very detailed requirements for legislative matters, and it is extremely cumbersome for it to do so.

Mr. Chairman, I would like to begin my remarks by saying, first, that S. 2477 is a positive step in the right direction, particularly with reference to prior bills. We believe that it has already eliminated the worst features of these prior bills and, if modified in the ways which we set forth in our written statement fully—and I will set forth today—we would support it.

Now, there are four areas that I would like to go into. I want to highlight them briefly, talk about some of our basic differences and then go into them. These are, one, definitional complexities; two, the area of solicitation as a basis for registration; third, the registration and reporting requirements; and, fourth, the role of the Comptroller General.

Our difficulties with the S. 2477 can be lumped into two general categories. The first is, we feel that it is still far too complex. The Constitution in 20 words defines, in the first amendment, the right of the people to petition their Government for a redress of grievances. S. 2477 is a 36-printed-page exception to that first amendment right. It must be comprehensible to the average citizen. It is simply not enough that lawyers can sit down and figure out what they are supposed to do. Everyone has to know whether they are going to have to register and, if so, what the consequences are in terms of reports and everything else. It simply is too difficult right now.

Now, we are dealing with first amendment rights. This ought not to be treated like the Internal Revenue Code. The bill ought not to be a bill that is going to put lawyers to work here in Washington, D.C., advising their clients about it. In our view, there ought to be a rule-of-thumb—when in doubt, leave it out. Underinclusion ought to be the rule rather than overinclusion when you get to doubtful areas, because, after all, we are dealing with the first amendment right of the people to petition their government.

And you know, far better than I, how important it is that the lines of communication be kept open, and that everyone need not fear what they are going to have to do or not do if they try to communicate with the Congress.

Second, we feel there are still too much reporting requirements in the bill. We believe that the reporting requirements should be used properly and should not be used in a manner that would create significant problems for smaller organizations—and, I might add, organizations that are engaged in legislative activities on a whole variety of topics, because with the various provisions as they are now in there, it requires differing treatment for differing issues, thereby causing a great deal of complexity in the recordkeeping and reporting requirements.

We think that the lobbying bill ought not to produce information to be used as an encyclopedia on influencing Congress and influencing the executive branch. What it ought to produce is information designed to elicit what are the most significant influences upon the decisionmaking processes—not what every influence is, but what the most significant ones are. The Congress should ask itself, is this information essential or is it merely peripheral? Once again, our rule of thumb—too little is better than too much.

Now I would like to get to the four specific areas that I mentioned. I hope you would feel free to interrupt me during the course of these

particular areas so that we can get an interchange and try to understand exactly how I feel about them and hopefully answer your questions.

The first—definitional complexity. Let's take for a moment the exclusion in subsection 4(f)(1)—and it is only in that subsection—for lobbying communications directly to a Member of the House of Representatives or the Senate from the State in which the individual resides. Now, that is excluded from the 12-communication rule in determining whether an organization meets the threshold test of lobbying—that is, any officer, director or employee of that organization can communicate with his State delegation without it counting toward the organization's lobbying qualification.

Now, we feel that that exclusion ought to apply everywhere or it ought to apply nowhere. We don't see any logical reason why it ought not to be required across the board.

Chairman RIBICOFF. Isn't it so that every Congressperson and every Senator, represents the people of his or her district or State, and the Senator or Congressperson from that State or district is the natural person for people in that area to make their point of view known, even though many of us—including Senator Percy and myself—are concerned nationally with national problems?

Mr. MORRISON. There is no question about that, Senator. My point is only this, that the exclusion ought to apply either in all of the definition sections, that is, the exclusion for lobbying your own State representatives, or it ought to apply no place.

As it is written now, it only applies when an organization is making direct oral communications in terms of whether you get up to the threshold amount of 12 so that you have to register.

But in other important areas—for instance, solicitation of others to lobby the Congress—if an organization, or, for that matter, an individual, seeks to encourage individuals in his or her own State to write you or Senator Percy or anyone else, or anyone else in that delegation, that the intrastate exemption, if we will call it that, does not apply. It is only written so that it applies in the one area.

Now, this is bad because I think it is inconsistent—but it is also bad because it adds enormously to the complexity of the bill. And it makes it very difficult to keep in mind all these permutations and combinations.

Similarly with communications to the executive branch. The intrastate communication rule does not apply there either. And so you have got a similar kind of a situation where you have got these definitions that apply in very limited areas, adding very much to the complexity.

We also feel that the 12-communication rule, if you are going to base lobbying registration on that, is too few. It really ought to be increased to a greater amount—and we are particularly concerned about the possibility of tax-exempt organizations being required to be audited by the Internal Revenue Service—and while the bill provides only that they cannot be subject to revocation of their tax-exempt status because of registration, the fact of registration is surely going to require an audit, provoke an audit, and cause an enormous amount of difficulty in time-consuming matters.

In this regard, I think—and it is not mentioned in my written statement—that there ought to be an explicit exemption from the 12-

communication rule—I don't believe there now is—when a Member of Congress or a committee requests an organization to submit information or to provide technical advice in counting toward that registration requirement. That would help out a great many of these organizations.

Furthermore, we would point out, in the definitional complexity, that an organization which has its own employees, in-house lobbying activities and capabilities, must make 12 communications in order to register and those communications must be oral in addition to, beyond this intrastate exclusion. However, if the same organization goes out and hires an outside person to do the lobbying activity, a single communication, oral or written, is enough to trigger registration. Now, I don't know that necessarily there is any logical reason why those ought to be different. I am unaware of any such reason. But the point I want to make is—it complicates the matter greatly. And that is what I am concerned about. This bill ought not to put lawyers to work.

Now, beyond the areas of definitional complexity, the second point is the requirement of registration based upon grassroots solicitation only. Now, we are taking as a given that the organization which would be required to register has not made the requisite 12 oral communications during the particular quarter, because if it did, it would register under one of the other provisions, and you don't need to catch it in under grassroots registration. We are not talking about reporting now, we are simply talking about registration.

It is our firm belief that there is no reason to require registration of an organization which does not have even 12 communications during a 3-month period with any Member of Congress and/or their staffs. In our view, perhaps they are engaged in lobbying activities under some ultimate definition of the word, but the question is, are they likely to be significant? In our view, the answer is no. Now, of course, we support reasonable reporting requirements as to what kind of solicitation activities at the grassroots level, an organization that is already registered as a lobbyist for other reasons, is engaged in. That is a different question from whether the solicitation itself ought to trigger registration.

For instance, I note that under section 4(f)(3) a union would have to scrutinize its newspaper with care to be sure that it was not attempting to influence legislation, because the exemption for newspapers in the bill as it is now written provides only for exemption for newspapers distributed to the public. Similarly, letters to stockholders by a corporation—if they could be construed as attempting to influence legislation, and if that is all the corporation did, it would have to register as a lobbyist, even though it didn't make the minimum of 12 communications in a quarter.

Now, we don't see any point in doing that. True, we may miss a few organizations that might in some sense be registered as lobbyists, but we think this bill ought to catch only the most important and most influential ones. And we think that the requirement of indicating in a report to be filed what solicitation activities at a grassroots level are going on is sufficient.

Chairman RIBICOFF. Do you think a corporation with 200,000 stockholders scattered around the United States which writes a letter to its stockholders, saying to contact your Congressman or Senator,

should be required to register? Suddenly a lot of mail comes to a Congressman or Senator. Shouldn't he know that this was started by corporate headquarters to pass a piece of legislation that affects that corporation?

Mr. MORRISON. The answer is, I think that it should and I am almost certain that it will, even without this provision. And I say that because I find it difficult to believe that any corporation with 200,000 stockholders that is prepared to spend the money writing the letter is not going to either through outside counsel or through their own in-house staff, going to make 12 communications during the quarter. It just doesn't make sense for a company to spend 10 cents a letter times 200,000 letters——

Chairman RIBICOFF. Maybe they don't do it that way. Sometimes it goes in their annual report or with a dividend notice—as long as they can insert a little piece of paper in an envelope that is going out to the stockholders anyway.

Mr. MORRISON. It won't cost perhaps 10 cents, but I can't believe that an organization that is that concerned about a piece of legislation is not going to have a sufficient 12-person presence up on the Hill to do something about it on a more direct basis.

And I agree with you, Senator Ribicoff, that it would be perfectly appropriate to include a requirement that any such letter that is sent out be reported in some respect. What I am concerned about is, a small group which does nothing but send a few letters out to people, particularly people back in their own States and asking them, write their own Congressmen—because, after all, as I mentioned earlier, the intrastate exemption does not apply to solicitation activities. Now, I don't know whether that is intentional or unintenional, but it is a fact, as I read the bill.

So that the kind of activities which you indicate you want to encourage, and which we strongly believe should be encouraged—writing your own Representative—that is going to be discouraged if somebody in Washington can't simply go out and tell the people, there is an issue you ought to be aware of. And I am concerned about this.

Senator PERCY. I would say, though, Mr. Morrison, in response to the chairman's question, many times it is very difficult to tell whether the origin of a write-in campaign is from a labor union or the company. Many times a labor union has different objectives and views. But when their industry is threatened, and jobs are threatened, they work pretty closely with management. Sometimes they take the initiative in getting you to write, and you suddenly get an avalanche. And really sometimes you can't tell whether it is inspired by the corporation itself or by the labor union.

Chairman RIBICOFF. Let me give you an example of Senator Percy's concern—the question of whether we renew DISC in the tax bill is a matter of great interest to many companies and many labor unions.

Management and labor leadership may get together and say, let's start getting petitions and letters, individual letters, to your Congressman or Senator. All of a sudden, there is an inundation from the same town, the same day, about this problem.

Mr. MORRISON. Well, I have no objection to having that information reported. I only suggest to you that, for two reasons, I wouldn't have registration triggered on that alone. First and most important, because

I think that any union and any corporation that is that concerned about DISC, for example, is going to be up here lobbying on that anyway—you just can't leave it to a letterwriting campaign alone.

Second, by including these provisions based upon solicitation in your bill, you are going to catch some pretty innocuous people who are simply engaged in trying to drum up their fellow citizens. And you greatly complicate the definition section—it runs to 10 pages now, it is very complicated and hard to understand all the relations, it requires that the reporting provisions run to six pages or seven pages now, because you have got to take into account each of the different ways in which registration might be required.

And I agree with you, Senator, that there ought to be a report filed indicating that information. I simply differ with you as to whether, if all that the organization did was to do that, that ought to trigger registration.

Let me mention a matter briefly that I don't discuss at great length in my testimony, but you raised it earlier—and that is regarding lobbying of the executive branch.

We feel for four reasons that this bill ought not to include it at all, even to the limited extent that it does include it. And we say, first because, unlike the lobbying activities before Congress, we have never had a bill riddled with loopholes that we need to improve upon in the executive area—that is to say, there are far fewer abuses that can be documented.

Second, we don't have the interrelation, except at the White House level, between campaign financing and decisionmaking process, as we do here.

Third, as the Justice Department pointed out, we have a variety of situations in a variety of different agencies that require differing treatment.

And, last, we believe that it is worth trying the logging requirements, keeping of records and reports of conversation, in S. 1289, which, as you are probably aware, is now pending before the Judiciary Committee, and there will be subsequent hearings on that later this month.

We firmly support that bill, particularly as it appears in the committee print of September 19, 1975—and we think that is the preferable way, at least at the start. Let's try that rather than going whole hog. Of course, the bill now eliminates many of what S. 815 would have done, and I recognize that, but I still feel that, for instance, the requirement that if an individual or a group in Washington, for instance, working on food problems, was aware that the Department of Agriculture was going to put out new regulations on beef quality grading, which they did last spring—and they wrote people back home and said to them, look, this is important, it is going to affect your interest, write a letter and so forth and so on—all these letters were a matter of public record, the petitions were all signed. We don't see any reason to require registration as a lobbyist in that situation.

Now, the third topic I want to talk about is the registration and reporting requirements. And first and foremost, we are concerned about the reporting of gifts and loans.

We are concerned first because of the $50 limitation in that act. We don't think that $50 is necessarily too high or too low. We believe that it is impossible to make a judgment as to how much is too much,

that whatever the figure is, somebody is going to say it is too generous, and it ought to be disclosed on the public record. We think that every organization that spends money for entertainment, gifts, so forth, regardless of the amount, ought to make those disclosures. Now, second, we are concerned that as written the bill applies only to gifts and loans—it doesn't apply to entertainment, free corporate plane rides, honoraria, "earned" income and the like. Whether those items are proper or improper seems to us to be a matter which the public ought to decide—and they ought to be fully disclosed on the public record.

Third, we are somewhat concerned still over the problem of individual gifts, that is, gifts that do not come from the registered lobbyist, be it a corporation or a union or any other kind of an organization—but come out of the pocket of the individual.

Now, corporate officers in many cases are paid very high salaries, and one very easy way to get around the disclosure of gifts and so forth would simply be to increase the salary of the top corporate officials or those engaged in lobbying activities by whatever amount—it wouldn't have to be done on any formal basis, but with the understanding that the money that would be left over in the additional salary would be used for appropriate purposes. The possibilities of that are extremely great. We feel, therefore, that there comes a point when individual generosity by a person whose organization is engaged in activities before the Government ought to be disclosed on the public record—and we have picked an amount of $100, the same amount as in the election law—simply saying that at that point, even though it is an individual contribution, it is not being deducted, it is not being reimbursed—it still ought to be disclosed.

Last, with respect to these gift items, we are concerned by the total exclusion in this bill and in S. 1289 of any provision for reporting of gifts, entertainment, and so forth to the executive branch. The papers have been filled recently with stories about Northrup's hunting lodges, and the public wants to know what is going on. If Defense Department employees are being entertained, they may well have their judgments affected by that—and the public has a right to know. Whether it is your committee or another committee, this opportunity to have those items of reporting disclosed on the public record ought not to be missed.

Our statement also mentions several points with respect to the registration requirements and reports which I won't go into at length, except with respect to one particular item that troubles us. That is the requirement in the reports that every person in an organization who makes a single communication with respect to a single issue has got to list both the name of the person and the issue on which the communication was made. Organizations such as Public Citizen and Congress Watch engage in a wide range of communications with Members of Congress and their staffs about an enormous range of issues. We are not confined simply to one or two questions. And it would be extremely burdensome to have to make a report on each issue that you had a single conversation about.

Now, the second problem is in the same vein—the term "issue" is a very flexible defined term. For instance, we have a tax group that is lobbying now extensively on various provisions of the tax reform

legislation. Would the individuals working on that bill be required to report whether they are lobbying with respect to DISC, child-care deductions, declaratory judgments, capital enhancement—every single one of the multiple issues?

As we read the bill, they would have to do that. And we don't see any purpose to be served by that. What needs to be done is to disclose who is working on tax reform legislation—and that can be done on a far simpler basis than is now provided.

Last, we, too, are very concerned about the powers of the Comptroller General. First, whether the Comptroller General is purely a legislative arm of Congress or whether the Comptroller General has mixed functions, it seems to us to raise a number of questions about whether the Comptroller General can constitutionally carry out some of the duties that have been assigned to him in this bill. In particular we refer to the cease-and-desist powers. It is unclear to us whether the Comptroller General can on his own issue a cease-and-desist order and whether, pending the appeal to the court, there would be up to $10,000-a-day civil penalties, for violating that cease-and-desist order. If that is in fact what the Comptroller General can do, it raises most serious questions as to whether a legislative arm of the Congress has those constitutional authorities.

Second, if the Comptroller General can't do that, and if penalties only start to occrue once the court has decided that the cease-and-desist is proper, then we are going to have an inordinate amount of delay between the initial proceeding before the Comptroller General and the ultimate court decision, during which time the disclosure we are seeking is not going to be put on the public record. We are very concerned about that—and we believe, therefore, that the powers, as the Justice Department agrees, should be lodged in the Justice Department as in traditional law enforcement situations.

We are also concerned, as the statement of the Bar Association of the District of Columbia evidences, about the provision of section 10(9), which authorizes—indeed, makes it the duty of the Comptroller General—to conduct special studies and investigations with respect to specific lobbying activities of specific individuals, at the request of any Member of Congress. Of course, the Comptroller General must be able to make reasonable investigations. But to give him subpena power and the power to take depositions at the request of any Member of Congress, opens the potential of harrassment—and as a provision in the bill which, if it continues to be included, I can state to the committee, we would be unprepared to support the bill for that reason alone.

I want once again to thank the committee and particularly the staff for the spirit of openness with which they have been dealing with everyone. It has been extremely important in this very delicate and complex area to keep the lines of communication open—all of us, working on all aspects of this bill, have continuously, in my experience, refined our thoughts and analysis as we see differing viewpoints. And it is a matter that I think we all have to continue to work on to try to come out with as good a bill, as workable a bill, as possible.

Chairman Ribicoff. Thank you very much. I have no further questions, but I do believe Senator Percy does.

Senator PERCY. Mr. Morrison, I would like to ask you about that provision of S. 2477 which requires the Comptroller General to develop a cross index of persons identified in lobbying registrations and reports and persons identified in reports filed with the Federal Election Commission.

There is an important connection to be drawn between lobbying and campaign contributions, but do you feel that it is necessary for the Comptroller General to go through the expensive and laborious process of cross-indexing, or would it be simple enough for interested individuals to obtain the desired information from two separate in-indexes?

Mr. MORRISON. Well, Senator, my first view is that we would prefer to have both functions lodged in the same agency, so that we would not have to go through this expense of setting up a cross-indexing.

We think that a person, as you point out, may well be concerned about the connection between these two areas, and that person ought to be able to go to a single building and walk into a single file room and find the information that he or she wants to have. Now, I realize that there are some problems with the Federal Election Commission—indeed, there are very grave constitutional questions about certain of its functions. Those will hopefully be resolved, and indeed it may cause the Congress to redefine or to reevaluate the manner in which the Members are chosen—and that indeed may cause you to be able to recombine them into a single agency, as we would prefer. In spite of the fact that the Election Commission is very busy now, we think that by the end of 1976 they will be through their startup time, and they will be able to handle these duties, and so we recommend that they be given these responsibilities.

But in the event that they are not given, we think that there ought to be a ready way in which—and let me give you precisely the kind of problem we are concerned about needs to be solved. You know that the Ford Motor Co. is lobbying on a particular bill, and you want to find out whether the people that are being lobbied have received campaign contributions from employees of the Ford Motor Co., over $100. There ought to be a ready way in terms of the indexing so that you can get that information without knowing all of the information in advance, such as who the money want to and so forth and so on.

That is what we are primarily concerned about. And it may be that that is a relatively simple matter—I am not a student of computers. I can't give you that information. But I would want to be sure that whatever was put into the bill was put in and the Comptroller General and the Election Commission were directed to solve that problem, whether it is done by a cross-index or whatever it is. I don't have any strong feelings about that particular matter.

Senator PERCY. You also indicate that honoraria, free plane rides, and similar gifts would not have to be disclosed under S. 2477. Section 7(a)(2) of the bill requiring the reporting of any gift or loan of money or anything of value which exceeds $50 in amount or value.

Don't you feel that the phrase "anything of value" would encompass such gifts?

Mr. MORRISON. I want to make two points now. The first point is not in answer to your question, but is a comment about the problem

with the bill. You and I have a difference of opinion as to what that section means—that is precisely the kind of thing I am very concerned about when I talked about definitional complexities earlier.

But, second, to answer your question directly, no, I do not feel that you are covered, because if I read the sentence grammatically, it says that a record of any gift or loan of money—and then I read it as inserting "or of anything of value," that is, a gift or loan of anything of value, rather than a gift, comma, a loan, comma, or anything of value, conferring of any benefit.

Senator PERCY. Well perhaps we could clarify that point in our legislative history. Certainly I would interpret it broadly.

Mr. MORRISON. Well, as I say, that perhaps could be done in the legislative history, but given the reluctance of many lobbyists to fully report all of this information, I would certainly prefer to have it done in the statute itself, so that there are no questions about it. And if it is a matter simply of draftsmanship, then there is no difference of opinion—as I didn't think there was, but I did feel compelled to point that out specifically, because I read it a couple of times before I finally reached the conclusion that that phrase modified only the "of."

Senator PERCY. If it is obscure to you, Mr. Morrison, it might well be obscure to those who would choose to interpret it that way. We want to leave no shadow of doubt as to what is intended or meant.

Therefore, we will request that the language be looked at from that standpoint by both majority and minority counsel to be certain that it is clear.

And I agree, it should be in the statute and not in the report.

I have no further questions. I wish to thank you very much indeed for your testimony.

Mr. MORRISON. Thank you very much, Senator.

[The prepared statement of Mr. Morrison follows:]

PREPARED STATEMENT OF ALAN B. MORRISON, DIRECTOR, PUBLIC CITIZEN LITIGATION GROUP, AND JOAN B. CLAYBROOK, DIRECTOR, CONGRESS WATCH

Mr. Chairman, members of the committee. We are pleased to have this opportunity to appear before you today to discuss S. 2477, the Lobbying Act of 1975. In many respects S. 2477 is a significant improvement over prior bills which your Committee has considered, such as S. 815. In particular, we are pleased that it eliminates registration and reporting requirements for private citizens and the provision that would have required that every oral contact with a Members of Congress, a staff employee, or an employee of the Executive Branch to be reported on a quarterly basis.

S. 2477 also wisely eliminates most of the provisions applying the lobbying laws to activities before the Executive Branch, as well as the worst features of the disclosure requirements that would have made the names and amounts of contributions for every individual who gave over $100 to a voluntary membership organization a matter of public record. S. 2477 has properly chosen not to require irrelevant details of expenses such as rent and telephones, instead including only those figures which are readily ascertainable. It has also eliminated duplicative filings so that only an organization and not its employees who are actually engaged in lobbying activities must file reports. Finally, it establishes the important principle that there must be cross referencing between the information supplied with respect to lobbyists and that dealing with campaign contributions.

While these improvements are to be applauded, we are not yet prepared to support S. 2477 although it is much closer to a good bill than any others we have examined. Before discussing our specific difficulties with S. 2477, we would

like briefly to mention two fundamental deficiencies in the present law and in other pending bills which, in our view, remain uncorrected in S. 2477.

First, the present law is conceded by all to be vague and its coverage uncertain. If nothing else, any new lobbying law should clearly define the obligations of all persons who are the slightest bit concerned about attempting to influence decisions before the Congress and the Executive Branch so that they can easily determine if they are subject to the Act, and if so, what their obligations are. If the law is complicated, or it takes a great deal of time to prepare the requested reports, it will seriously hinder those who seek to exercise their First Amendment rights to petition the government. Moreover, unless it is both comprehensive and enforceable, it will become an object of ridicule and disrespect just like the present law. Second, the lobbying laws are not intended to produce information which is to be utilized as the basis for an academic study of every potential influence on the decision-making processes of government; they are intended to inform Congress and the public who are the most significant and influential lobbyists so that they may take this information into account in the decisions that they make. It is principally because S. 2477 has deviated from these principles in important respects that we cannot support it in its present form.

I. DEFINITIONAL COMPLEXITIES

Our first and primary difficulty with S. 2477 is that it is far too complicated. The First Amendment, in merely twenty words, establishes the right of the people to petition their government for the redress of grievances, yet S. 2477 provides an exception to that right that covers thirty-six printed pages. Besides its sheer length, the definitions, which comprise two sections and which are essential to an understanding of the operative provisions, extend to ten pages themselves. In our view, this prolixity alone is a sufficient reason to reject the bill in its present form. There is enough deterrence as it is now for citizens who wish to exercise their right to petition the government, but if citizens have to sort through a law of this complexity before deciding whether to exercise that right, even if the law does not require them to register as lobbyists, that deterrence will be increased significantly. We believe that a number of provisions in the bill can and should be eliminated both as substantive improvements and to make it more comprehensible and workable.

For example, consider section 4(f)(1) which provides that an organization is a lobbyist if it has engaged in twelve oral "lobbying communications." That rule has an exception that excludes from the twelve communications any communication between an individual who is an officer, director, or employee of the organization and any Member of the delegation of the State of which he is a resident. This exclusion is apparently based upon the theory that citizens should be able freely to communicate with the elected representatives from their State, and thus, regardless of whether the communication comes from an employee of an organization which may have business dealings before the Congress, the communication should not be counted in determining whether the organization is a lobbyist. Undoubtedly the exception is also partially the result of a desire to avoid the difficulties that would otherwise exist in determining what are personal communications and what are not.

In our view this exclusion, if it is a sound one, would seem to apply on an across-the-board basis throughout S. 2477, and yet this is the sole place that it appears. We have no way of knowing whether this was intentional, but, aside from questions of logical consistency, this limited exclusion greatly complicates the definitions and makes it extremely difficult for anyone but the most careful student of the Act to keep these distinctions separate. A lobbying law is not supposed to be read and studied like the Internal Revenue Code. If it is not a simple statute, comprehensible by anyone involved with governmental processes, it will create serious impediments for those working with government. One thing is plain: we do not need a bill which simply provides employment for Washington lawyers familiar with its intricacies.

We believe that the exception for communications with elected representatives either should be applied on an across-the-board basis or should not be applied at all. We are not particularly concerned about the creation of a major loophole by the exclusion since there will be very few organizations large enough to be able to mount significant lobbying efforts based solely upon local contacts with State Representatives and Senators without a "twelve communication" Washington presence. In fact, the twelve contacts appears to be so low that any

such exclusion for local contacts seems meaningless, especially now that communications with Congressional staffs are included. It is our view that twelve contacts per quarter is well below the level that a lobbyist needs to have in order to have any significant influence. Thus, if a fixed number of communications is to be the touchstone of registration, we recommend increasing the figure to perhaps twenty or thirty contacts a quarter.

A second example of confusion and excessive coverage of the bill relates to matters before the Executive Branch. The definitions in section 3(10) and 3(11) seem to be somewhat circular in nature, while at the same time not being entirely symmetric and consistent with one another. But leaving aside those questions, we do not support S. 2477's inclusion of attempts to lobby the Executive Branch via the Congress and *vice versa*. In our view the approach taken by S. 1289 (in particular the Committee Print of September 19, 1975), which requires the logging of outside contacts by high officials in the Executive Branch, as a means of determining who places calls to the Executive Branch (including calls from members of Congress), and who the Executive Branch calls, is the preferable way to handle this problem. We believe that there has yet to be established a record for bringing the Executive Branch under the lobbying provisions, and accordingly, we recommend against such inclusions in this Act. We also note that by doing so, some of the complexity in both the definitional sections and the reporting provisions will be eliminated.

Third, we note the differing requirements that trigger registration for outside persons hired to do lobbying activities on the one hand, and employees and officers of an organization who are paid to engage in such activities on the other. In the latter case, a minimum of twelve contacts must take place, all of which must be oral, before registration is required, whereas for the hired lobbyist, a single written communication to a staff member triggers the obligation to file a registration statement with full reporting thereafter. If the purpose of this bill is to require disclosure of significant lobbying activities, we do not understand the basis upon which one communication (oral or written) is significant if it comes from an outside lobbyist, but insiders' efforts become significant only if they have twelve oral communications. Moreover, this differing treatment for what appear to be similar situations, not only raises difficulties in interpretation, but greatly adds to the length and complexity of the bill.

II. SOLICITATION AS A BASIS FOR REGISTRATION

The second major area with which we differ from the approach taken by S. 2477 relates to the inclusion as a lobbyist of an organization whose only activity is to solicit others to make communications to Members of Congress and their staffs. We do not object to appropriate reporting requirements with respect to solicitation activities of organizations that are registered lobbyists.[1] But the requirement that an organization which does not make even twelve oral contacts in a three month period, should nonetheless, because of its efforts to solicit others to make lobbying communications, be required to register as a lobbyist, is one which we are unable to comprehend. In our view, an organization that makes less than twelve communications can not be a significant lobbying influence, and neither the public nor the Congress needs to be informed about its activities.

In this regard, we also note that the anomaly referred to above—the non-exemption for communications to State representatives except in the counting of the twelve oral communications under section 4(f)(1)—operates in the area of solicitations. Thus, even if a group solicits individuals and asks them to write only their Representatives and Senators, the exemption does not apply. We also note that under subsection 4(f)(3) a solicitation by a labor union's newspaper asking its members to write their Representatives (or a corporation's letter to its stockholders) would be a covered solicitation since the exemption for newspapers in section 4(d)(6) applies only if the newspaper is distributed to the general public.

Beyond these anomalies, the solicitation of others to communicate with Congress as a basis for requiring an organization to register as a lobbyist comes very close to colliding with the First Amendment. Section 4(d)(1) of the bill already recognizes the right of individuals to express their personal opinions, and sec-

[1] We consider the information required by sections 7(c)(3) and 7(d) to be far greater than is needed and the effect of requiring organizations to record such data and report it quarterly will be to come close to eliminating grass roots lobbying for all but the richest groups.

tion 4(f)(1) partially recognizes the right to communicate with all of the Representatives from one State. Thus, at the very least, solicitations asking individual citizens to write Members from their own States should be excluded and doing so would be little more than an amplification of these two principles.

More fundamentally, however, we urge this Committee to strike these solicitation provisions entirely since they serve no useful purpose and significantly confuse the average person trying to understand the law. The inclusion of the soliciting organization as a lobbyist only if it engaged in the requisite direct lobbying communications would be consistent with the overall effort of S. 2477 to simplify and clarify the law and seems entirely justified by all of the circumstances. In short, we find the entire provision requiring registration based upon solicitation to be unnecessary and urge that it be stricken.[2]

In our view, the events that ought to trigger registration are communications with Members of Congress or their staffs. Once the triggering event has taken place, an entirely separate question arises as to what information should be required in the lobbyist's periodic reports, and on that we do not oppose the reporting of an organization's general solicitation activities. This is the kind of approach taken by section 7(c)(4) with respect to the reporting of legislative budgets which are not limited to activities which trigger registration (i.e., lobbying communications) but must include expenses "in connection with" all issues before the Congress, which presumably would include exempt communications such as testifying before a Committee or the cost of making a long distance call to an individual's own Senator. This is the approach that we recommend in connection with solicitation, and not that requiring registration based on solicitation alone.

III. REGISTRATION AND REPORTING REQUIREMENTS

A. Gifts

The most significant disagreement that we have concerning the registration and reporting requirements relates to section 7(a)(2), the reporting of gifts and loans. Our first objection is that the provision covers only items exceeding $50 in value. Our disagreement is not based on the fact that we believe $50 is too high a figure; our disagreement arises because we believe that the question of how much is too much is the kind of judgment that ought to be made by the public. Therefore, we urge full disclosure of all gifts so that the public can decide what is too generous and what might be the basis of an improper influence.

Second, there is a significant area of largesse which does not come within the limited terms of section 7(a)(2). We refer specifically to such matters as lavish entertainment and free corporate plane rides, as well as honorarium and other "earned" income from a lobbyist, all of which should be fully disclosed and reported. There is simply no basis for leaving out any of these items on the quarterly lobbying reports as section 7(a)(2) does.

We also note that this section applies only to gifts made by the lobbyist itself, *i.e.*, gifts coming out of corporate funds. What about the individual corporate officer whose salary is sufficiently large, either through the normal pay scale or because it is increased to allow the official to express his "generosity" to legislators friendly to his employer? What if he gives a thousand dollars of his "own money" to a lobbyist and is never formally reimbursed for it? That gift would not have to be reported under section 7(a)(2), and yet is is plain that the public ought to know about it. In our view any dividing line will be somewhat arbitrary, but we suggest $100, the same amount used in the election laws. Thus, all nonreimbursed gifts and entertainment over $100 (except gifts, etc., to close relatives) would have to be reported, with all other individual items to be reported only in the event that they are reimbursed by the employer or deducted as a business expense.

Last, and perhaps most glaring in its omission from this provision, is a requirement that similar largesse directed toward officials in the Executive Branch be reported. It may well be that a separate bill is needed, covering not only registered lobbyists but any person with any business with the government. Such a bill would require such persons to file reports of their gifts, etc., to Members of Congress, their staffs, and high Executive Branch officials—specifically including

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[2] We also note that the inclusion of lobbying before the Executive Branch, even to the limited extent contained in S. 2477, complicates the solicitation issue further and is wholly unjustified regardless of what other rationales can be advanced for the inclusion of those who solicit others to lobby Congress. There seems no reason to require reporting and registration simply because a group of concerned citizens tries to obtain the comments of others with similar views on proposed regulations or other matters of great importance pending before administrative agencies.

White House officials. But regardless of the form in which such legislation is cast, the important point is to be sure that defense contractors such as Northrup, who entertain Pentagon officials, should make full disclosures of that fact on the public record.

B. Registration on requirements

We are also concerned about some of the provisions in section 5 relating to registration. First, we are strongly opposed to the requirement in section 5(a)(3) that the identity and amount of contribution of any individual who provides more than 5% of an organization's support, must be disclosed in a lobbying report. We see no purpose in requiring the identification of any individual contributor, and to include such a requirement raises serious constitutional questions under the *NAACP* line of cases. (Those cases do not involve corporate supporters, and hence requiring disclosure of all organizational supporters is not subject to the same objection and should definitely be retained.) Moreover, it is virtually certain to have its primary effect on smaller organizations because it is highly unlikely that gifts large enough to meet the 5% test will go to any but a relatively small organization. This is due to the fact that organizations engaging in substantial lobbying activities do not qualify under section 501(c)(3) of the Internal Revenue Code, and hence contributions to them are not tax deductible, thereby significantly limiting the organization's access to large donors. Since the provision will apply to small organizations virtually to the exclusion of large ones, we believe that it should be stricken for that reason, as well as because of the grave constitutional difficulties that it would face even if it applied in practice, as well as in theory, to all lobbying organizations.[3]

Second, we seriously question the necessity of including in the initial registration, or for that matter in the quarterly reports, of the name of each person in an organization who made even one lobbying communication during the requisite period. For a large or even medium sized organization, the possibility may well exist of a number of people having contacts with Members of Congress and/or their staffs (and perhaps even Executive Branch officials to the extent covered by the bill) that would not be noted by the organization, and hence might be inadvertently omitted from the forms. In our view all that should be required is that the organization list its principal lobbyists, as well as any person who devotes a substantial portion of his/her time to lobbying.

We are also concerned about the requirement of section 5(d) that registration forms be updated within fifteen days after there is a change in certain information in them, including the addition of other individuals who may be making a single lobbying communication on behalf of the organization. Even for those items which need not be updated within fifteen days, there is still a requirement for updating the registration form in accordance with the rules to be promulgated. We simply do not comprehend the necessity for requiring frequent updating of registrations when every three months there will be a detailed report that will have the effect of modifying the registration statement to the extent that it needs modification. Furthermore, S. 2477 would validate a registration only for a single year [section 6(e)] which means simply more paper and little information beyond that which would be contained in the quarterly reports. Perhaps, it would be advisable to require reregistration at the time of the convening of a new Congress every two years, but beyond that, the quarterly reports, and not new registration forms, should be sufficient to inform the public about the activities of the lobbyist.

C. Quarterly reports

Section 7, which deals with the information to be included in the quarterly reports, is quite lengthy and very complex. We would much prefer an approach which required a single basic report with such additional items of information as may be required for different types of organizations. Obviously, to the extent that registration based on solicitation is no longer required, the reporting rules would be simplified, and it would be easier to utilize a single basic form. As it now stands, the only common reporting items are the identity of the lobbyist and any gifts given by it over $50. However, on top of these two items are five

[3] We note for the record that Public Citizen has never had a contributor whose identity we would have had to disclose under this proposal, nor do we believe that it is likely that anyone will give us approximately $50,000 so that this provision would be brought into play.

full pages of differing requirements that will be exceedingly hard to keep straight for any but the most careful student of S. 2477.[4]

With respect to the substance of these reports, the one communication rule again raises significant problems since the organization is required to file reports indicating every issue on which a single communication was made during the quarter. For a lobbyist working on one or two questions, this may present no great difficulty, but for many of the groups who work on an enormous variety of issues, and whose employees will often, at the request of another organization having a strong interest in a particular topic, make one or two calls on it, the burden of listing every issue on which a single communication was made, is almost as burdensome as the reporting requirement for every contact that was contained in S. 815. The basic question ought to be, what are the principal issues on which the lobbyist is working, and there is simply no reason to include every issue on which a single communication was made.

A significant problem also arises with respect to reporting the number of persons who are solicited by the organization, primarily because of section 4(g)(3), which provides in essence that the soliciting efforts of an affiliated organization shall be treated as those of the organization which asked the affiliate to make the solicitation. Thus, it will be necessary for the reporting organiaztion to find out from the underfinanced and overworked affiliate, exactly how many people were solicited, in order to comply with the lobbying reporting requirements. This fact alone will be enough to destroy virtually every form of citizen solicitation at the grass roots level. It goes far beyond the reasonable suggestion that the lobbying organization indicate its own soliciting efforts and set forth the requests it made to affiliates. Moreover, that information serves no useful purpose of which we are aware and should be eliminated.[5]

IV. ROLE OF THE COMPTROLLER GENERAL

With respect to the assignment of the responsibility for administering this Act to the Comptroller General, we have a few questions and reservations. It is not apparent why it was necessary to separate these duties from those in the closely related field of campaign financing when they are assigned to the Federal Election Commission. If it is because of the current press of business by that Commission, that difficulty is a short term one and should abate by the end of the 1976 campaign. We would, however, note that the status of that Commission is shrouded in considerable uncertainty, an uncertainty that hopefully will be lifted when the decision is handed down by the Supreme Court before too long in *Buckley* v. *Valeo*.

Our most serious doubts with respect to the Comptroller General arise because of the cease and desist authority given him, which includes the right to assess significant monetary penalties. The General Accounting Office is neither an independent regulatory agency, such as the FTC, nor is it a purely investigative arm of Congress, but its status lies somewhere between a legislative and executive agency. This fact makes it doubtful at best that GAO can constitutionally take on the job of issuing adjudicative type cease and desist orders.

In this connection there is a further question that we have regarding the cease and desist powers and the issuance of penalties. It is not clear to us whether the penalties of up to $10,000 a day start to run from the date of the cease and desist is issued by the GAO, but if they do, even more serious constitutional questions are raised. If the penalties do not start to run until all the appeals are exhausted, then a cease and desist order can be violated with impunity for many months and indeed years before it becomes final. In that case, the use of cease and desist orders would result in long delays before the information required by the law would be on the public record, and thus would be far less desirable than it would be to bring a traditional civil action in a federal district court where reporting could be ordered quite promptly.

It is partly for this reason that we believe that cease and desist authority, in the context of what is primarily a disclosure statute, is not a very useful concept. What is needed in our view is authority to bring direct actions in court as

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[4] As we read section 7(f), the concept of an "issue" for reporting purposes is very flexible, including both a whole bill and any portion of it. To require the reporting of any communication on any "issue" in a bill such as the 1975 Tax Reform Legislation, which covers literally hundreds of topics, seems pointless and imposes very significant burdens on groups working on more than a single narrow aspect of the bill.

[5] Rather curiously, there is no definition of an affiliate anywhere in S. 2477.

the primary mechanism of obtaining compliance. If that is what is adopted, we see no reason to deviate from the normal rule that the Justice Department ought to bring proceedings of this kind. While the Justice Department is not the appropriate agency to process the records and make initial investigations, we believe that it ought to handle these injunctive proceedings. If indeed Congress believes it is not able to do so, then the problems we have with the Justice Department are far more serious than any problems involving the lobbying laws, and Congress should direct its immediate attention to them. It is one thing to suggest that the Justice Department cannot properly bring criminal prosecutions against the Attorney General or the President; it is another to suggest that it cannot police the routine activities of lobbyists.

Finally, in this regard, we note that, to the extent there is any fear of nonenforcement by the Justice Department, S. 2477 apparently rejects that position because it assigns the most sensitive kind of cases—criminal prosecutions—to the Justice Department and leaves the less serious civil cases to the General Accounting Office. In short, we believe that whatever agency is given the responsibility for assuring compliance with the law should be given adequate means to make investigations, but that all law enforcement functions, both civil and criminal, should be vested in the courts and be brought as a result of proceedings commenced by the Department of Justice or the local United States Attorneys.

There is one other aspect of the proposed responsibilities to be assigned to the Comptroller-General that we believe must be eliminated from the bill. Indeed, we are prepared to go so far as to say that, if this provision were to remain, we would oppose the bill on that ground alone. We refer to section 10(9) which makes it the "duty" of the Comptroller General, "at the request of any Member of the Senate or the House of Representatives" to make a special study relating to the lobbying activities of any person. It further authorizes the Comptroller General to exercise all of his investigatory powers, including the issuance of subpoenas and the taking of depositions, to obtain the necessary information if it is not in his files. That provision, which can be used as a license to harass unpopular causes at both ends of the political spectrum, would give the Comptroller General vast powers which he would be obligated to exercise if requested to do so by any Member of Congress. To make matters worse, this authority is without limitation as to the reasons for any request, nor is there any limitation upon the number of times per year that such a request must be honored. While we have no doubt that some mechanism should be available to permit special studies to be made, the potential for harassment under section 10(9) is far too great as it is presently written.

V. TAX EXEMPT ORGANIZATIONS

Section 8 establishes a prohibition against denying an organization status under the various provisions of section 501(a) of the Internal Revenue Code based solely on the fact that the organization complies with sections 5, 6 and 7 of S. 2477. There is nothing wrong with this prohibition except that it does not go nearly far enough in protecting these organizations. While the fact of registration may not cause an organization to lose its tax exempt status, it will surely prompt an investigation. Indeed, the Internal Revenue Service would be negligent if it did not regularly check the list of lobbying registrants to see whether any organizations claiming section 501(c)(3) status were on it, since under that section substantial lobbying activities are forbidden.

It would seem to make little sense to prohibit the IRS from looking at public documents such as registrations, even if that prohibition could be enforced. Therefore, we see no way out of the difficulties that will result when any 501(c)(3) organization registers as a lobbyist. These difficulties are compounded because of the grave uncertainty as to the meaning of the prohibition against "substantial" attempts to "influence legislation" contained in section 501(c)(3).

In our view, the tension between the lobbying laws and the Internal Revenue Code can at best be minimized and can never be completely eliminated so long as the restrictions on lobbying remain in the Code. Therefore, we suggest raising substantially the number of lobbying communications required before registration is mandated and to eliminate the requirement of registration based solely on solicitation as means of reducing the number of instances that will prompt an IRS investigation based on the fact of registration. As we have

noted above, these provisions should be amended for other reasons as well, but in our views this further difficulty makes such amendments even more imperative. For the record, we wish to make it clear that section 8 will have no effect on Public Citizen, which is a 501(c)(4) organization and hence is not limited in the amount of lobbying activities in which it may engage.

CONCLUSION

Beyond these comments, we have a number of other relatively minor suggestions concerning both the language and the substance of S. 2477, but we will not take up the time of the Committee with them today. We wish to commend the openness that the Committee has shown in considering these matters and in hearing all sides on these very delicate and complex issues. Since we assume that this practice will continue in the future, we ask the Committee's permission to make a further submission to the staff dealing with these other matters.

Let me conclude by reiterating our position that we firmly support the concept of the reform of the lobbying laws and that the general approach of S. 2477—to make lobbying registration applicable only to those who are hired to lobby—is a sound one. Our basic concern is that the bill is far too complex as it is now written, with the result that it will deter many from exercising their constitutional right to petition the government out of a fear of either having to register or violating the law. It is our firm belief that in this field in particular it is far better to err on the side of under-inclusion, even to the point of risking the creation of "loopholes", rather than producing a bill that covers all, and chills many.

Thank you very much.

Senator PERCY. These hearings are adjourned until tomorrow morning at 10 o'clock.

[The committee adjourned at 12:02 p.m.]

LOBBY REFORM LEGISLATION

WEDNESDAY, NOVEMBER 5, 1975

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to recess at 10 a.m., in room 3302, Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman) presiding.

Present: Senator Ribicoff.

Staff present: Richard Wegman, chief counsel and staff director; Paul Hoff, counsel; Matthew Schneider, counsel; Marilyn A. Harris, chief clerk; Elizabeth A. Preast, assistant chief clerk; Brian Conboy, special counsel to the minority; Connie Evans, minority counsel.

Chairman RIBICOFF. The committee will be in order. Our first witnesses are Mr. Kenneth Norwick, Ms. Hope Eastman of the ACLU, and Henry P. Monaghan, professor of law at Boston University.

I think you might all come up together. I think you are probably on the same side.

Mr. NORWICK. I hope so, but we have not checked.

Chairman RIBICOFF. I would suggest that your entire statements go into the record as if read and that you confine yourself to 10 minutes for any oral statements so that we will have time for questions. Your prepared statements will be entered in the record at the conclusion of your testimony.

Mr. Norwick, do you want to start?

TESTIMONY OF KENNETH P. NORWICK, LEGISLATIVE DIRECTOR OF NEW YORK CIVIL LIBERTIES UNION AND AUTHOR OF "LOBBYING FOR FREEDOM," ACCOMPANIED BY HOPE EASTMAN, ASSOCIATE DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION; HAL BENSON, DIRECTOR OF GOVERNMENT ACTIVITIES, UNITED CEREBRAL PALSY ASSOCIATIONS, ACCOMPANIED BY BARNEY SELLERS, DIRECTOR OF GOVERNMENT RELATIONS, NATIONAL HEALTH COUNCIL

Mr. NORWICK. Thank you, Mr. Chairman, and good morning. My name is Kenneth P. Norwick, and I am here today on behalf of the American Civil Liberties Union.

My own background is as a professional lobbyist on the State level, and I have served for the last 5 years as legislative director of the New York Civil Liberties Union, which is the ACLU's largest State affili-

ate. I am also the author of a recently published book, "Lobbying for Freedom," which attempts to encourage and help people become lobbyists in the best sense of the word.

As you have mentioned, Mr. Chairman, we have prepared a fairly lengthy statement on this issue, and we would appreciate it if it could be added to the record.

Chairman RIBICOFF. All of the prepared statements will go in the record as if read. I would rather save time for questions.

Mr. NORWICK. I would like to emphasize at this time something we touched upon at the end of our testimony, and that is we have a very real concern that your bill and the other bills that are pending before this committee will reach out and encompass the kind of ad hoc, single issue, grassroots lobbying efforts for whom it would be most difficult to comply with the bookkeeping and recordkeeping and reporting requirements of those bills, and for whom these requirements would be most intimidating and most burdensome.

Chairman RIBICOFF. Let me ask you, would the requirements be burdensome to an organization like ACLU?

Mr. NORWICK. In many ways, I think they would. Ms. Eastman is here to be able to respond to that more directly. Let me suggest why. The ACLU has State affiliates in every State, and city chapters in many States across the country.

Our staff personnel and our board members have contact with Members of Congress on the State and local levels, all of whom would have to be reported under your bill. In addition, your bill, I believe, would require a listing of every officer or director of our organization. "Director" is defined as a person who is a member of the governing body.

Now, if our State affiliates are considered part of the national organization for this purpose, which I think they would be, we would have to report under your bill every time an executive director in Connecticut, or executive director in Montana, or any place else, had a contact with a Member of Congress.

Chairman RIBICOFF. Let me ask you, suppose there was a provision in the legislation which placed the burden on the Connecticut chapter of ACLU, and not on the national chapter or the national organization.

Mr. NORWICK. Even there I would respond by saying we have a number of lawyers, we have volunteer lawyers, we have part-time people, who meet up with Members of Congress, who meet them on forums, who meet them on television programs, who may say, "S. 1 is really a terrible bill, we don't like it, we think you ought not to do such and such."

To have to, even on the State level, keep track of all those contacts, and report the name and address of every such person or to make the State affiliate responsible for doing so, I can attest would be most burdensome.

Chairman RIBICOFF. Let me ask you: Why would it be any different? As I see it, the problem is that in your mind you should be exempted from doing what is required of the chamber of commerce or the manufacturers association?

I just think about going back to the State of Connecticut. Again, there are many, many local chambers of commerce, in small towns that are not any better organized, that don't have any more of a staff than the ACLU in Hartford or Bridgeport, Conn.

Mr. NORWICK. For these purposes, we make no distinction as to the substance and content of the lobbying effort. For the purposes of the burdens we talk about, we don't say leave us out because we are right, but include everybody else because they are wrong.

In fact, we are concerned about the right to lobby, whatever the point of view, whether it is for the "right to life," or proabortion, or whether it is for or against busing.

Chairman RIBICOFF. Have you discussed your problem, or your thinking with members of the committee staff?

Ms. EASTMAN. At great length.

Part of my job at the ACLU is attempting to encourage our State affiliates, and their individual members, to get involved with the legislative process. As Ken described, our affiliates are small shoestring operations in the States, except for the very large States. They have on their list of agenda, State legislative activity, State litigation, State educational programs and to a certain extent participation in the national litigation activity of the ACLU. Thus, almost always the last item on the agenda is involvement in the legislative process in Congress, because it is furtherest away from their immediate problems. So if I say, "please get people to write letters. This is a very dangerous bill," they may barely find time to do that. As I have tried to explain to Paul several times, they may find time to do that, but if I say "please get people to write, keep a list of the people who write, keep a list of how many people you solicit to write letters, report back to me, keep track, keep records," they are going to throw up their hands and say, "look, it is too much of a problem, we are just not going to get involved."

It is one thing to say to ACLU—and this goes back to your other question about the size of the organization to be covered—your organization is big enough, spends enough money at lobbying to be covered. We are not an ad hoc one issue, in and out organization, that exists one day, and does not exist another, or that is active in Congress one day and inactive the next. Thus to the extent you cover organizations, it may be appropriate for us to be included.

The question becomes, what should we have to tell you. It is easy to keep track of how much money is paid for my salary. I am a full-time legislative person at ACLU. It is quite another thing to keep track of the ACLU board in North Dakota who might solicit letters.

Chairman RIBICOFF. I sympathize with your position, but if a national organization, whether it is ACLU or a health organization, or the Chamber of Commerce, the manufacturer's association, AFL–CIO, or Common Cause, Ralph Nader's organization, suddenly grinds up their machines, and tells everybody to start writing to his Congress person or Senator or Governor on an issue, and suddenly a flood of letters start coming in, is there anything wrong with the Member of Congress, or a Governor knowing who is behind a sudden letter writing campaign?

Ms. EASTMAN. May I take the liberty of answering the question, by answering your question? What do the Members of Congress really need to know in that circumstance?

I have tried to put myself in that position several times. It seems to me that when a congressional office suddenly receives a very large flood of letters, what they want to know, it seems to me, is whether there is something out there stimulating this mail.

Chairman RIBICOFF. Frankly, from 40 years of political experience, I probably would know who is in back of it, but I do not think everybody would.

I think it is a good thing to know, whether you have got a propaganda machine going.

What bothers you about this?

Oftentimes those writing a letter do not know what they are talking about. People will say they are against S. 42 when they have not the slightest idea what the bill provides. It is not the question of somebody really feeling strong about an issue. This procedure is very well organized among a lot of groups. I know these groups, they press a button, and presto, in comes a flood of mail from all over the State, or all over the country on *x* issue.

Shouldn't the public know? Shouldn't Congress know who is in back of a letter writing campaign, or a propaganda campaign?

Today we have trouble in the House on the consumer protection bill.

It is very obvious to me what has taken place. But I do not think every Member in the House of Representatives knows what did take place on the consumer protection agency bill. They don't know the reason why they are getting the mail all of a sudden.

Mr. NORWICK. Well, I sympathize with the concern you express.

You would like to know whether these letters are being machine-run and signed.

On the other hand, it seems to me that any enforcement, and any policing of this kind of "solicitation," will necessarily encompass people who are simply making speeches, or otherwise engaged in grass-roots lobbying activities.

As a professional lobbyist, I often make speeches to groups and forums, and on radio and television, about an issue, often urging people to write their officials on it.

Now, as I read the bill, these speeches are solicitations, and I would have to report them quarterly to comply with the bill. I have real concerns about that kind of burden.

Beyond that, I am concerned that the very act of reporting solicitations may minimize letters that in fact are spontaneous, and are in fact genuine.

There may well be a tendency to say, if a letter or call is encouraged by a solicitation, then we can discount it.

You will say, let's discount it because it is all generated. It is not spontaneous.

It seems to me that a controversial issue, like S. 1, will get a great deal of publicity, and people will make speeches on it, and it will be discussed on radio and television, and that as a result there will be mail on that issue. It may well be that at the same time, people on both sides of the issue will be pushing those buttons to generate such mail. But if they are pushing those buttons, it also means there are lots of other people talking about the issue. Therefore, we question what the consequence is of knowing that the ACLU has put out a request urging people to write their Congressman about S. 1

We have done that all the time, and what does that tell you?

I am afraid it will minimize the impact of getting people to write those letters.

Chairman RIBICOFF. What it will tell us is that a massive, well organized letter campaign is occurring, that the letter is not necessarily the opinion of each letter writer, rather, the opinion of his organization asking him to do something, whether he believes in it or not.

Mr. NORWICK. What if he did mean what he said in his letter.

Suppose the letter was well written——

Chairman RIBICOFF. That is all right.

You know, as I say, sometimes I think campaigns like this work against the people that start them.

They do not always work, but it is a lot different if you have been a Senator, a Congressman, a Governor for some time, and you understand the politics of massive letter campaigns, than if you are a freshman Congressman, who suddenly thinks the roof is falling in.

Ms. EASTMAN. What I hear you saying is that if an individual writes in response to his organization's alerting him to an issue, you can make a judgment he does not feel as strongly about it as if he had written—

Chairman RIBICOFF. Not necessarily. You want to know whether this is something of which they are aware.

Is this an issue that really concerns them, that they feel deeply about, does this reflect public opinion, or the individual's opinion, which is very important?

But we should know if it is this or if they are just reacting as part of the propaganda machine?

Ms. EASTMAN. The organization does not simply play the part of a propaganda machine. The organization serves as an important function, which is letting people know what happens in Washington, which they may not learn by reading newspapers far away from here.

Chairman RIBICOFF. Yes; but to say write a letter to your Congressman, which is all right, and I have no objection, is attempting to influence legislation.

Ms. EASTMAN. People do not write if they do not agree. We take stands all the time with which lots of our members do not agree. Presumably, if they do not agree with the material we send them out, and they do not feel strongly, they will not write.

Chairman RIBICOFF. It is amazing, because I tried this out, whenever I have a letter-writing campaign, just out of intellectual curiosity. You often remark to a constituent: "I got your letter." A lot of people do not even remember writing the letter.

What bothers me about such-and-such a campaign, is that the people involved have not the slightest idea what they wrote, and they have not the slightest idea what they are talking about.

I just think, where about a month ago, I was inundated with some mail from management, and the employees, of a certain factory in Connecticut, on the DISC legislation. The letters that came in were very obviously from form letters.

The people writing did not have the slightest idea of what they were writing about, or what was involved. But suddenly within 2 or 3 days, I got about 600 letters from everybody.

I wrote them back, explaining the issues involved and probably for the first time they had a slight idea what it was all about.

Was DISC something that concerned them, or does a boss come

down and tell his employee to write to his Senators? That is what we want to know.

Ms. EASTMAN. I would like to make a drafting suggestion. What I hear you saying and from conversations I have had all around the hill about this, is that you want to know, when you start getting a lot of unidentifiable mail, who is soliciting people to write. Would not the whole thing be solved by requiring, once you decide where you are going to put the minimum levels for having someone register as a lobbyist in the first place, a checkoff system which asks "Do you or do you not engage in grassroots lobying." Or if you require the lobbyist to list the issues it has been involved in, have a box where the lobbyist would check off, yes or no, whether it has been involved in grassroots lobbying. Possibly you might also ask for a rough listing of the number of States in which grassroots lobbying occurred: More than 10 States, less than 10 States, more than 20 States, less than 20 States. This fairly simple kind of information does not require an elaborate accounting system or an elaborate tracking system for all solicitations. You would not have to keep track of how many times you call or write to Connecticut, this would enable whoever will police these reports to put together on any given issue a list of individuals and groups which have reported that they have engaged in grassroots lobbying. That gives you some information to evaluate your mail without causing this enormous burden.

Chairman RIBICOFF. We are really not as concerned with your type of organization.

Ms. EASTMAN. But you are catching us.

Chairman RIBICOFF. I am listening to you. We are not interested really in you specifically. But people are getting away with murder in lobbying, and no one knows what they are doing, we are trying to catch them. Now we are trying to write a law that is fair. It is pretty hard to say these are good guys, and these are bad guys. You cannot write a law that way.

Also, we are very concerned, I know I personally am, that everyone's constitutional rights are protected. I want you to be able to get your point of view across and I do not want to create a big bureaucracy.

I do not want to make it complex. We held hearings on the first bill. We rejected it. We tried to draw this one exactly to assure that those people or groups would not be burdened, they should not be burdened.

Now, you register as a lobbyist?

Ms. EASTMAN. I do.

Chairman RIBICOFF. You register for the ACLU?

Ms. EASTMAN. Yes.

Chairman RIBICOFF. And do you register?

Mr. BENSON. No.

Mr. SELLERS. We are in a different tax category.

Chairman RIBICOFF. Would this bill be a burden on you?

Ms. EASTMAN. This bill would be an enormous burden on our operation. We would have to keep track of far more than we now do to file our reports.

Chairman RIBICOFF. Why not, Mr. Norwick and Ms. Eastman, sit down with the staff, instead of just talking about the language of

the bill, tell them where the burdens are, and what is making that big bureaucracy, where the hardships are, and the difficulties.

Let us start with the problems and work to the language.

Ms. EASTMAN. We have had several conversations with Paul, and Marilyn, and other committee staff people about the bill before this present version was introduced. Obviously we are certainly willing to have them again, but I just want to make it clear that we have already been raising these problems with the staff.

Chairman RIBICOFF. All right. There will be time. I am sure the staff will be around. Will you be available from November 20th to December 1st as there will not be any hearings during that period. There will be an opportunity for the staff, both majority and minority, to sit down with groups represented by the witnesses, to see how we can work this out, not to over-burden you.

I know what they are talking about. But, it is the same burden. If you get a chamber of commerce in Saybrook, Conn., which has some guy running a drugstore, and he is an executive secretary, and somebody at the U.S. Chamber of Commerce has contacted your people, it is not hard for the chamber of commerce, but it is certainly hard for the druggist in Saybrook, as it is for some young lawyer who is a volunteer in Hartford, Conn.

Ms. EASTMAN. And we do not want to deter the young druggist from writing a letter to you.

Chairman RIBICOFF. That is right. We want to make sure the druggist working for the chamber of commerce has no more problem than he has to have.

Ms. EASTMAN. If you want to know what the national chamber or the ACLU is doing, that is one thing, but a druggist, that is a whole different burden.

Chairman RIBICOFF. The question is, is it being done, not because the druggist or the lawyer in Hartford is doing it, but because headquarters in Washington is asking him to do it. Is it part of a national campaign? Or is it a true reflection of an individual's feelings?

The staff has notified me that they would like to talk to you before the 20th.

Ms. EASTMAN. Anytime.

Mr. NORWICK. Mr. Chairman, may I make one general observation about the approach apparently underlying these bills, and about some of the things you have said. You are apparently interested in fairly large-scale, well-financed professional lobbying operations.

I do not have any sense that you are interested in the Saybrook Committee for Quality Education, or the Right to Life Committee of East Hartford, or the 18th Congressional District Committee on Impeachment, and that is really what we are concerned about.

The impeachment example provides an excellent model for our concerns. When the impeachment effort was first started, and the ACLU was there at the beginning, we tried to help local communities and local groups organize themselves into their own ad hoc committees to impeach, and they did organize themselves.

Perhaps they assessed themselves $25 a person, and perhaps they did not, and perhaps they had a chairperson, or not, but there were impeachment committees, and organizations, in almost every town

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and city in the country. And there is no question in my mind that under all of these bills each of those committees and organizations would be lobbyists who would have to fill out and file quarterly reports, and list all of their directors, which under your bill is defined as somebody who is a member of the governing body.

If you have 15 people who organize themselves as the East Saybrook Committee on Impeachment, I suppose they are all members of the governing body, and they would all have to identify themselves as a part of those reports. And if they all gave the same amount, and there were less than 20 of them, then they all gave more than 5 percent of the total treasury, and so they would all have to be listed for that reason as well. If they had more than 12 contacts, which means one of them coming to Washington once and going to more than 12 offices, they would become lobbyists under your bill and be subject to all these requirements.

This cannot be what we are talking about.

Chairman RIBICOFF. Let me skip to Mr. Benson and Mr. Sellers.

Are you bothered, basically, by what bothers Mr. Norwick and Ms. Eastman—the reporting provisions, and the recordkeeping? Is that what you consider the basic burden to your health organizations?

Mr. BENSON. That is one of the primary burdens, Mr. Chairman.

Chairman RIBICOFF. What else bothers you specifically?

Mr. BENSON. I think that we are concerned about the impact that the requirements of this bill will have.

In our written statement we have just submitted to you, our major concern has to do with the whole area of the fact that a lobbyist has never been defined adequately, and it is on this basis that we would like to see our particular organizations exempted until such a definition is arrived at.

Chairman RIBICOFF. Well, you see, if we start exempting organizations, I do not know how many thousands of organizations will try to exempt themselves.

I mean, if there are problems that concern you, in which the bill is wrong, or burdensome, we ought to straighten it out in the bill, but I do not see how we can write in a bill in which we are going to exempt Mr. Benson and Mr. Sellers.

Mr. BENSON. As an example, to point out my own particular small office here in Washington, for the United Cerebral Palsy. It is a member agency of the National Health Council. We have a very small staff, and a good portion of my time, and the small staff I have, is actually spent out in the grassroots, working with the staffs and the volunteers, and our affiliates across the country, really helping them to better understand legislation, not just on a national level, but also on a local and State level too.

Chairman RIBICOFF. Are you saying that you think this bill is supposed to catch the whales and we are catching the minnows? Is that what is bothering you?

Mr. SELLERS. Yes, but it does it in a very peculiar way for the organizations we represent.

The category 501(c)(3) the tax category for our organization represents approximately 60 percent of these health organizations. That particular category includes primarily the charitable organizations

under the IRS, and in order to qualify for that tax savings they have to agree to engage in an insubstantial amount of legislative activity, and that has never really been defined. In practice, what happens is that groups such as United Cerebral Palsy, which Mr. Benson represents, are continually under a threat of an IRS audit and review, where the standards and rules are really terribly unclear. IRS has not given guidance to its own agents, which makes that very unclear within the IRS structure itself. So if you in effect pass a bill which includes the (c) (3) organizations, the charitable, education, and public safety kinds of organizations, along with all of the rest, you will force a situation in which these groups will either refuse to file, or they will file incomplete reports, or they will stop lobbying completely. What you will do is force them to say they are lobbyists, when if in fact they do not do such, and they do not know whether simple admission of that fact may threaten their tax exempt status. That is different from the ACLU; the ACLU is not that sort of tax exempt organization.

Ms. EASTMAN. I know we are not, but this is something I know a little bit about, I know Senator Muskie has a bill which would alter the lobbying ability of 501(c) (3) organizations. That must be solved first. Their problem is almost a self-incrimination problem, except it is not criminal context. They are in a situation under your bill where compliance with the requirements in the bill, is an admission that they may have engaged in more than a substantial amount of lobbying.

The Justice Department, in their testimony on this very bill, despite the disclaimer in these bills which says we do not intend any information required to be filed to have any effect on the tax status, has served notice that it will take information from wherever it can get it. If a group has to file these reports, they are going in fact to use them to make a judgment on its tax status. So you are putting them in a very dangerous position by including them. I think, probably rightly, that they would be forced to curtail their lobbying considerably. Thus your bill would have the effect of putting them out of legislative business altogether.

Chairman RIBICOFF. Let me ask the staff, do you feel the points being made by the witnesses are pertinent?

Do you have any idea now, what is lobbying, and what is not lobbying under 501(c) (3), irrespective of this bill?

Mr. SELLERS. We really do not.

As an organization, we hired an attorney to write a pamphlet, which I think we may have around here, simply trying to describe the extent to which the law is clear, and the extent to which it is unclear, and that pamphlet is out of print, and now being printed again, we think primarily because there are organizations all around the country, including nonhealth organizations, which need this information.

Chairman RIBICOFF. May I suggest that the staff sit down with the IRS, and see if they can work out a series of formulations or regulations. I can see what is worrying you here. There is certainly no intention to catch you people in such a web, that causes you a lot of problems.

The staff tells me there are 214,000 tax-exempt organizations.

Do they lobby?

I know many of them do lobby, such as yours. I can tell by the mail I get, including that on health issues, which is all right.

Mr. SELLERS. What we are doing is making a distinction between different kinds of health organizations.

Not all of these kinds of health organizations are in the same tax category, and what we are saying is a large proportion of these health groups are in this special category, under which this special rule applies.

For your information, there is legislation which has been supported by approximately 20 members of the Ways and Means Committee, which has been introduced, and which is scheduled to be taken up in the second phase of tax reform hearings, which I presume will take place some time early next year, and the purpose of the legislation is simply to clarify what these rules are, so that everyone in the tax category will understand those rules.

Once such legislation passes, it will be much easier for this kind of tax-exempt organization to make a decision about whether it qualifies as a lobbyist or not, and there will not be threats. That is what is important. The organization will not feel that simply by complying with your law it will automatically threaten its own tax-exempt status. In effect what we are saying is, "Let us have legislation that first clarifies our own standing as lobbyists, and defines that term 'substantially,' and once that is passed, it is easy for us to comply with registration requirements."

Chairman RIBICOFF. Well, I think I have a fairly good idea of what your fears are, and I am sympathetic to what the four of you are talking about.

We are not going to settle all of those details here this morning. I would recommend to the staff that they sit down with you during the next couple of weeks, and let us start with your problems and see what they are, and if there is some way we can draft legislation that will take care of it, especially where it is burdensome, and prevents you from really performing your objectives. At the same time, however, there should be an understanding of what you are doing, which is legitimate lobbying.

Lobbying is legitimate. It is just a question of how lobbying should be done.

I do not want to stop you from making a point, in trying to get grassroots support for your position.

Everybody else does it. There is no reason why you cannot.

Mr. SELLERS. If I may try to make this problem real to you, Mr. Chairman, I called up one of the largest health organizations in the country about a month ago, and told them that there was this bill that was introduced in the House to try to clarify the lobbying definition, i.e., what "substantial" means.

I asked them if they were interested in trying to work on that bill, and they said they would not even touch it, because the IRS was then in their offices physically, auditing what they were doing. I asked them what was the purpose of the audit, they said they honestly did not know, that the IRS agent was going through their files, and was trying to find out the extent to which they were involved in legislative activity, but the agent himself did not know the rules and standards by which he would have to make a recommendation to his own regional

office. And the judgment made by that agent can virtually destroy that organization, because it can remove that tax-exempt status. That is the kind of problem we are dealing with, and it is a very real one.

Mr. NORWICK. We agree with that concern. We have a related concern that has not been touched upon today, and is not touched upon in our prepared testimony, but one which I would like to raise at this time.

In your bill, on page 27, you empower the administrative department that would have the obligation to enforce it to prepare, at the request of any Member of the Congress, a special study or report of any lobbying group that registers. And, in order to prepare that report, the GAO would have the power to use all of its subpena authority, and its questioning authority.

Chairman RIBICOFF. I think that is a bad provision myself.

You do not have to spend any time on that. I think we will rectify that.

Mr. NORWICK. In conclusion, Mr. Chairman, we would like to suggest that we have reviewed the various bills, and have found that they are very similar in many ways.

We find that the bill introduced by Senator Metcalf, S. 2068, differs in some significant ways from the bill that was introduced by you, and we tend to feel, although we do not like everything in that bill either, that some of the approaches there which differ from yours—for example, in terms of the definition of lobbyist, and in terms of what has to be reported and required—may be preferable.

Chairman RIBICOFF. Do you like those provisions of Senator Metcalf better? Do you think it would solve the problem?

Mr. NORWICK. We prefer a financial threshhold definition of lobbyist, although we do not like the threshhold in that bill, to a 12 contact, or any number of contact, definition.

We think that if there has to be any disclosure and reporting at to reach the 12 contact threshhold very quickly, and so we think that even the most halfhearted lobbying activity will quickly reach the 12 contact threshhold.

We think that, if there has to be any disclosure and reporting at all of lobbying activities, the threshhold should be in terms of a fairly significant amount of money.

In your own statement, in introducing this bill, you talk repeatedly of "significant efforts" that have a "significant impact" on the legislative process.

Twelve visits on 1 day, from a citizens group, is not that. And the expenditure of $250 a quarter is not that, by any stretch of the imagination. If you are interested in where the powerful, big money lobbying is, these thresholds are far too low.

If you are interested in the chamber of commerce, and the drug companies, and General Motors, and the ACLU and Common Cause for that matter, you can make your threshold much higher. You will get the big lobbyists, and you will leave out all the small ones.

Chairman RIBICOFF. What do you think the threshold should be?

Mr. NORWICK. I would think the expenditure of $10,000 a year for lobbying would include everybody you are interested in, and would exclude everybody you should not be interested in, in terms of lobbying, and I think that should be the threshold.

Chairman RIBICOFF. Your contention is anybody who spends less than $10,000 is not going to make much of an impact?

Mr. NORWICK. I think that is probably a fair inference.

It will not make the kind of impact you are concerned about.

You said in your remarks earlier this morning that there are lobbyists getting away with murder.

Frankly, and we say this at the outset of our prepared statement, we do not know what you are concerned about, we do not know what the evils are, what the murder is.

We do not know what that murder is. Honestly, Senator, we do not know what you are upset about, and why there is this movement to regulate lobbying.

Chairman RIBICOFF. Do you think the lobbying laws now are good laws?

Mr. NORWICK. I do not want to be heard to defend the 1946 act, which the Supreme Court itself had a very difficult time understanding and interpreting.

The fact of the matter is we would like to question all of the premises that underly the movement to regulate lobbying.

Chairman RIBICOFF. I think maybe you ought to get yourself and Common Cause here and have a debate.

Mr. NORWICK. We would love to.

Chairman RIBICOFF. Have you ever sat down with Common Cause?

Mr. NORWICK. On the State level, we have had this out for the last 2 or 3 years, and our State legislature is trying very hard to come up with a bill that meets all of these legitimate concerns.

Our contention is that if you are interested in a lobbying organization that spends a vast amount of money entertaining, and wining and dining legislators, you should zero in on that concern, and find out what is going on.

If the concern is a lobbyist misrepresenting who he or she represents, zero in on that, and write a law that says you cannot do that sort of thing.

If you have specific problems about lobbying, let us isolate them, let us find out what they are, and let us address them. But let us not adopt a dragnet across-the-board approach that is based on nothing more than the feeling that we want to know everything about lobbying.

Chairman RIBICOFF. Well, during the next week or 10 days, the staff will be in touch with you.

Mr. NORWICK. Thank you.

[The prepared statements of American Civil Liberties Union and National Health Council, Inc., follows:]

PREPARED STATEMENT OF KENNETH P. NORWICK ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

My name is Kenneth P. Norwick, and I appear here today in behalf of the American Civil Liberties Union. For the past five years I have served as the Legislative Director of the New York Civil Liberties Union—the ACLU's largest state affiliate—and I am the author of the recently published book *Lobbying for Freedom*, which is a citizen's guide to lobbying in the various state legislatures.

We are grateful for the opportunity to testify on the most important subject of the regulation of the right to lobby. In short, we believe that that right is a precious and fundamental ingredient of our democracy, and that this Congress should proceed with the utmost care and caution before it undertakes to "regu-

late" that right. Against that background, we have reviewed the principal lobbying bills now pending before this Committee, including S. 2477 introduced by Senator Ribicoff, and we have concluded that all of those bills unnecessarily and improperly infringe upon the First Amendment's guarantee that "Congress shall make no law abridging . . . the right of the people . . . to petition the government for a redress of grievances."

In this statement, we shall first set forth in general terms our views regarding the current effort to regulate lobbying, after which we shall discuss our particular reservations with respect to the pending bills.

I. THE MOVEMENT TO REGULATE LOBBYING

In addressing this issue, we have tried very hard to perceive what specific evils this legislation is designed to correct, what lobbying abuses will be curtailed if it is enacted. Clearly, none of the public statements in support of these bills—whether from Members of Congress or from private spokesmen—identify any such evils or abuses. Indeed, most of those statements seem to go out of their way to deny even the existence, much less the effectiveness, of any such specific wrongs.

As a result, it seems fair to conclude that these bills are not motivated by any specific wrongs that their supporters wish to correct. But if that is true, what then does motivate these bills? As best as we can determine, these bills seem to be motivated by certain widely held but essentially unproven assumptions about lobbying and the desirability of extensive governmental regulation of it. Those assumptions seem to be: (1) that lobbying per se is suspect and perhaps even inimical to the public interest; (2) that lobbying at present is shrouded in improper and unnecessary "secrecy" which thwarts the Congress' and public's "right to know" about it; and (3) that somehow the kind of regulation contemplated by these bills will enhance the public interest in independent, representative government.

With all respect, we seriously question the validity of each of these assumptions, and we seriously question whether such major legislation as this should be enacted on the basis of them. We further submit that these bills will almost certainly have exactly the opposite effect from that apparently envisioned by their supporters, serving to impede and discourage precisely the kind of lobbying they should be encouraging while at the same time enhancing the power and influence of those lobbyists who are already the most entrenched and powerful.

We shall now examine the assumptions that we believe underly these bills.

A. The role of the lobbyist

It has always been politically popular to attack lobbyists. In the public mind, the lobbyist is a disreputable and dishonest character lurking in the halls of government trying improperly to influence the course of official decisions for the benefit of selfish "special interests." Politicians, newspapers, and even some self-proclaimed "good government" groups who exploit this impression are virtually guaranteed a favorable response and little or no opposition.

We believe this image of the lobbyist is largely inaccurate and extremely unfortunate. We also believe that, quite to the contrary, the lobbyist is the embodiment of an indispensable element of our democratic form of government—a person exercising the First Amendment right "to petition the government for a redress of grievances." In our judgment, that First Amendment right is no less precious, and should be no more tampered with, than the other, better known guarantees of that Amendment, including the freedoms of speech and of the press. And we believe that that is especially true with respect to such comprehensive, across-the-board regulation as is contemplated by the pending bills.

The widely-held notion that lobbyists represent "special interests," which are by definition in conflict with the "public interest," is, we believe, especially invidious. For such "special pleading" must be exactly what the framers of the First Amendment had in mind. Moreover, we strongly dispute the view that such special interests necessarily conflict with the public interest. In our judgment, every individual or organization exercising the right to petition the government—be it a commercial, or environmental, or religious, or good-government, or civil liberties point of view—reflects a "special interest," and that nobody has a monopoly on what is "the public interest." Indeed, we believe that the real public interest can only be determined after all those so-called special interests, which, in the best democratic tradition, will and should often disagree, are heard.

We do, of course, concede that some lobbyists may abuse their right to lobby,

just as some reporters and publishers may abuse their freedoms of speech and press. But we believe those individuals represent the exception and not the rule, and that in any event the answer to those abuses can never be the kind of comprehensive, dragnet regulation contemplated by these bills. Just as the best answer to bad speech is more speech, we believe the best answer to bad lobbying is more, and not less, lobbying. If anything, this Congress should be enacting legislation designed to encourage and facilitate the maximum possible lobbying; instead, we believe the pending bills can only serve to discourage and deter such new lobbying.

We dispute the assumption that lobbying is per se suspect and thus requires governmental regulation to protect the public interest, and we strongly dispute the assumption that comprehensive regulation is the appropriate response to whatever lobbying abuses may exist. If specific lobbying abuses exist, we believe the only appropriate legislative response to such abuses in narrowly drawn legislation designed to deal specifically with them.

B. The "right to know" about lobbying

A common ingredient of all of the pending bill is the requirement that individuals and organizations that engage in lobbying identify themselves by registering with the government. Presumably the purpose of such identification is to inform the Congress and the public as to the identity of those who seek to influence the course of government.

We have serious reservations regarding these requirements. Specifically, we believe these requirements are directly inconsistent with the right of anonymous political speech, a right that has repeatedly been reaffirmed by the courts. A recent decision in our New York courts well summarized the need for that right:

"The impact of the loss of anonymity in free expression is clear. Anonymity has been, historically, the medium of dissidents, shielding them from the retaliatory power of the establishment and, whether their fears of reprisal were justified or not, encouraging them to express unpopular views. Anonymous writings have an honored place in our political heritage. Their importance to the establishment of our democracy was recounted by the Supreme Court (per Black, J.) in *Talley* v. *California*: 'Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all . . . Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes.' 362 U.S. 60, 64–65 (1960).

"In a series of significant constitutional decisions, the chilling impact of the loss of anonymity of First Amendment freedoms was clearly recognized, and resulted in the striking down of various identification requirements . . ." *People* v. *Duryea*, 76 Misc. 2d 948 (Supt. Ct. N.Y. Co. 1974) affd, 44 A.D. 2d 129 (1st Dept. 1974).

Although we sympathize with the interest sought to be served by the requirement of identification and registration, and although we recognize that the Supreme Court has found such requirements to be constitutional, we find it difficult to understand why the right anonymously to seek to influence the course of legislation is constitutionally different from the right anonymously to seek to influence the outcome of elections. We submit that the Congress has the burden of proof to justify that difference.

(In this connection, by the way, I believe it appropriate to suggest that there is yet another purpose that is served by requiring all lobbyists to register with the government. Ever since I first registered as a lobbyist in New York several years ago, I have received countless invitations to political and fund-raising affairs and countless requests for contributions to various political campaigns, all of which were clearly traceable to that registration. I respectfully suggest that one reform not presently included in any of the pending bills would be either to prohiibt politicians from using such lists to solicit contributions or at least to require such politicians to themselves publicly register that they are doing so.)

A second common ingredient of all of the pending bills is to require the identification of those who employ lobbyists, including the identity of at least some of the members of private membership organizations who have lobbyists. Needless to say, our reservations with respect to the requirement that all lobbyists register—discussed above—apply with equal force to the requirement that those who employ them must also be identified.

In addition, we are especially dismayed by the proposed requirement that any individual members of or contributors to organizations which may engage in lobbying be disclosed as a condition to their lobbying. We recognize and commend the sponsors of the principal bills for their efforts to narrow significantly the required disclosure of individual members and contributors. However, we believe that even the required disclosure that remains is improper and unconstitutional. In our view, such required disclosure can only serve to inhibit and discourage those individuals from joining or contributing to causes they believe in and to inhibit and discourage those groups from lobbying, which we presume is not the intended purpose of the proposed requirement.

A long line of court decisions has consistently declared that such disclosure requirements cannot withstand constitutional scrutiny. Thus, in *United States* v. *Rumely*, 345 U.S. 41 (1953), the Supreme Court sustained the reversal of the contempt conviction of a person who refused to provide a Congressional Committee with the names of persons who had purchased political literature from his group, the Committee for Constitutional Government. The Court noted (at p. 46) that "the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals . . . raises doubts of constitutionality in view of the prohibition of the First Amendment," and held the Congressional subpoena invalid under a strict construction of the committee's enabling legislation.

In *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449 (1958), and *Bates* v. *Little Rock*, 361 U.S. 516 (1960), the Court held that civil rights organizations had the right to withhold the names of their members and contributors, with the Court stating in *N.A.A.C.P.* (at p. 462): "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective . . . restraint on freedom of association . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."

Even more significantly, in *Talley* v. *California*, *supra*, the Court ruled unconstitutional "on its face" a Los Angeles ordinance prohibiting the anonymous distribution of "any handbill in any place under any circumstances" (363 U.S. 60–61). Said the Court (at pp. 65–65): "There can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression . . ."

Most recently, in a major decision, the United States Court of Appeals for the District of Columbia, sitting *en banc*, unanimously declared unconstitutional a recent Congressional enactment that required a similar form of disclosure in connection with federal elections. *Buckley* v. *Valeo*, F. 2d (D.C. Cir. 1975). And although we disagree with almost every other conclusion reached by the Court in that case, we do agree with its unanimous view on this question. As that Court put it:

"It is well established that compelled disclosure of the kind of information section 437a exacts can work a substantial infringement of the associational rights of those whose organizations take public stands on public issues." *E.g.*, *N.A.A.C.P.* v. *Alabama, ex rel. Patterson*, 357 U.S. 449 462 (1958); *Bates* v. *Little Rock*, 361 U.S. 516, 522–524 (1960).

Some may suggest that these concerns are fanciful, and that most people will not be deterred from exercising their First Amendment rights because they will be publicly identified if they do so. However, we believe the answer to that contention provided by Chief Judge Bazelon in the *Buckley* case is exactly right:

"It is common ground that the First Amendment protects the privacy of one's associations and beliefs. Privacy is safeguarded first for its own sake, as a fundamental value of any society that respects the dignity of the individual. But privacy is also protected as a means of achieving the 'uninhibited, robust and wide-open' debate to which the First Amendment commits us. The First Amendment, after all, rests on the principle 'that the best test of truth is the power of the thought to get itself accepted in the competition of the market.' And privacy is essential to the proper functioning of that market because dissidents and heretics, fearing harassment, many decline to speak if they must first publicly identify themselves. As the Supreme Court has observed, 'Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all.'

* * * * * * *

"When law intrudes on contributors' right to the privacy of their beliefs, and threatens to drastically affect dissident speakers, the command of the Constitu-

tion is clear: absent compelling governmental interests that can be furthered in no less restrictive manner, the law cannot stand.

* * * * * * *

"One evil of disclosure—the invasion of the privacy of belief—requires no proof. The other evils—chill and harassment—are largely incapable of formal proof.

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"Even assuming that the causal links could eventually be established, many minor parties would wither and die on the vine awaiting the evidence required. The spectre of reputations blotted and lives ruined by the release of membership lists is still too vivid to claim ignorance of the danger disclosure poses. 'All others see and understand this. How can we properly shut our minds to it?' "

Under no circumstances do we believe any new lobbying bill should require the identification of any individual members or contributors to a lobbying effort.

A third common ingredient of all these bills is the requirement that lobbyists publicly disclose their lobbying expenditures and activities. Presumably, the purpose of these requirements is to inform the government and the public as to the amounts and purposes of funds being spent on particular governmental questions.

We submit that such reporting requirements are far too extensive and all-encompassing to accomplish their ostensible purpose, and that at the same time they carry with them very grave dangers of severely inhibiting and burdening the basic right to lobby. For example, we fail to see the legitimate public interest in knowing what a lobbyist is paid, or the name of every member of an organization who made even one "lobbying communication" in its behalf, or even a detailed listing of "each issue" the organization tried to influence, especially in the case of multi-issue lobbying groups. In our judgment, the burden that such record-keeping and reporting would entail, when measured against the questionable public interest therein, leads us to urge that all such requirements be eliminated from any bill that this Committee may recommend for approval.

On the other hand, we do believe that there may be a legitimate public interest in knowing about substantial expenditures by a lobbyist to or in behalf of a particular public official. Conceivably, if a lobbyist attempts to "buy" a vote, or indeed an official, as has sometimes been alleged, the required public disclosure of such purchases may well be appropriate. In this connection, however, we would suggest that such required disclosure be limited to expenditures made directly to or on behalf of one or more officials, and that such required disclosure be limited to amounts which might reasonably give rise to an inference of influence over them. Further, we would suggest that to be most effective any requirement that a lobbyist disclose such expenditures to or on behalf of an official be coupled with a requirement that those same officials also report every expenditure made to him or on his behalf by a lobbyist. If the public has the right to require the lobbyist to make these disclosures, surely they have the right to require their own public officials to do no less.

A special word of caution should be added at this point. Any requirement of disclosure presumably carries with it the right of the government to police and enforce those requirements, including presumably investigating the books and records of the lobbyists and interests involved. However, it is also clear that lobbying and interest groups in general may not constitutionally be required to reveal their books and records, and especially their membership and contributors' lists, to the government, and it is entirely conceivable that in enforcing the disclosure laws the government may well be violating basic constitutional rights of individual and associational privacy.

Finally, we would suggest that if the purpose of the proposed regulations is to disclose to the Congress and the public the exercise of influence over public officials, the proposed legislation hardly even begins to meet that goal. Thus, few of the bills include within their coverage the lobbying activities of public officials or governmental agencies, although they are at least as capable of influencing, through the expenditure of funds or otherwise, the course of legislation. Further, none of those bills even begin to address what may well be the most effective kind of "lobbying" influence of all—namely the influence a strong President, Congressional leader or political party leader can exert over a public official. Suppose, for example, a President indicates to a Member of Congress that he will support the Member's pet bill if only the Member will vote to sustain a particular Presidential veto, or new energy program, or controversial new crime program. Or suppose a party leader suggests to a Member of Congress the with-

drawal of party support the next time he or she runs unless the Member votes a certain way on a key bill. Or suppose the head of a major governmental deparment wines and dines (at public expense) the members of a Congressional committee at precisely the time the committee is considering that department's legislative program. Or suppose a local newspaper makes clear to its elected officials that the paper's endorsement in the next election depends on their votes on a controversial issue.

Are any of these practices different in their effect from the activities of private lobbying groups? Are they more or less defensible? Which are more likely to undermine the independence of our government? Can these practices effectively be controlled? Should they be?

We suggest that these are hard and importnat questions, and that they should be addressed and answered before any comprehensive regulation of the private lobbyist alone is enacted—especially if the justification for such regulation is the Congress' and the public's right to know who is influencing the course of government. To include the private lobbyist within such regulation while at the same time excluding the government as lobbyist strikes us as especially indefensible and contradictory to the asserted "right to know."

We will concede that the Congress and the public—or at least some parts of them—may have an interest, in the sense of a curiosity, in knowing about the activities of private lobbyists. But then, it is also indisputably true that these same people may also have a similar "interest" in knowing about many other things as well—all of which it has been determined they do not have the "right" to know. Thus, for example, there may well be an "interest" in knowing the confidential sources of newspaper reporters, or the membership lists of various organizations, or perhaps even the private correspondence of our public officials. But in all these cases, among countless others, it has been decided that the public's "interest" in knowing those things is outweighed by other, more compelling interests. Similarly, we submit that the public's interest, its "right to know," about the activities of private lobbyists may also be outweighed by other, more important concerns.

C. The impact of lobbying regulation

Underlying all the pending bills is the apparent belief that the information they will provide is necessary, in the words of Senator Ribicoff, "for Congress to operate effectively and for the public to understand the legislative process, and to participate in it as effectively as possible . . ."

Frankly, we fail to see how the availability of the information required to be disclosed by these bills will help accomplish those goals. To the contrary, we believe these bills will have no significant impact on the influence of those lobbyists who are the best financed and most sophisticated, or on the Congress' or the public's effectiveness in dealing with them. On the other hand, we also believe these bills will inevitably impede and deter those lobbyists who are the least well financed and sophisticated—and yet who may provide the only opposition to those other lobbyists.

Clearly, the registration, record-keeping and reporting requirements of these bills will be most easily complied with by those lobbyists and organizations who can best afford the necessary personnel and time to comply with them. But what about those lobbyists who even now can barely afford to maintain a lobbying presence at all, and what about the single-issue, ad hoc grass-roots lobbying groups that are utterly unsophisticated about the legislative process but feel strongly about that issue and want to make their feelings known to the Congress? As we discuss below in connection with the specific pending bills, there seems no question but that these requirements will severely impede, if not discourage completely, the activities of such lobbyists. And that, we submit, is exactly the result that must be avoided with respect to any proposed new regulation of lobbying. At the very least, we believe, some mechanism must be found to exclude from coverage those very groups for whom such regulation will prove so burdensome and intimidating as to effectively destroy their right to lobby.

II. THE PENDING BILLS

In the foregoing discussion, we have set forth our fundamental concerns with respect to any proposed regulation of the right to lobby. Obviously, all of those concerns are fully applicable to each of the bills presently pending before this Committee. Because of those concerns, we believe none of these bills should be enacted.

Nevertheless, we are aware that at least some of those bills have significant support, and that the momentum to enact them may be unstoppable. With that in mind, we shall now address what we consider to be the most disturbing specific provisions of those bills.

A. The definition of "lobbyist"

Each of the bills contains a definition of those individuals or organizations that would be subject to its provisions. In Senator Ribicoff's bill, for example, an organization qualifies for coverage if it has twelve or more contacts with Members of Congress within a three-month period, while under Senator Metcalf's bill (S. 2068), an organization would be covered if it spends $250 on lobbying within a three-month period.

In considering these definitions, we ask this Committee to envision the following situation: A group of about fifteen citizens in Hartford, Connecticut, or in Butte, Montana, or in any other city or town in this country, gets together because they are deeply concerned about the issue of abortion, or school busing, or the impeachment of Richard Nixon. These citizens know that that issue is presently being considered by the relevant Congressional committees, and they very much want the members of those committees to know how they feel. As a result, they establish themselves as an ad hoc committee to lobby on that issue; they assess themselves $25 each to cover the committee's expenses; and they authorize one of their members, who was going to Washington anyway, to carry their message to all of the members of those committees.

Under all of the pending bills, that ad hoc committee would have to register as a lobbyist and comply with all of the other recordkeeping and reporting requirements as well. Moreover, since each of the members of that committee contributed over 5 percent of the total sum collected, and since each would qualify as a member of the committee's governing body, each would have to be publicly identified and listed with the government. Furthermore, presumably, each would be legally responsible for the civil and criminal penalties that would follow from the committee's failure to comply with any of the bill's requirements.

We believe it is self-evident that to subject such groups to such requirements will necessarily discourage them from exercising their right to lobby, and that in most cases such groups will simply decide not to bother. We also believe that that result plainly violates the spirit of the First Amendment's right to petition, and that it is inconceivable to us what public interest is served thereby.

A recent lower court decision in New Jersey, in a constitutional challenge to similar lobbying legislation, reached the same conclusion. As that court put it, in reviewing some of the testimony at the trial:

"Several experienced state legislators, past and present, related their views as to the operation of the Act. Their concern was not at all with well-organized and adequately financed public information organizations and political committees such as the New Jersey State Chamber of Commerce for whom the Act might not have a substantial deterrent effect. Rather they were concerned with the so-called single issue groups or *ad hoc* committees which spontaneously spring up to voice their special interest on specific bills before the legislature. These less organized groups, often just husband and wife or neighborhood teams, constitute a very typical vehicle for political expression throughout the country and New Jersey. In fact, informal political cooperation is a most distinctive characteristic of the American public. Group action is at the heart of the political process. In contrast to the well-organized lobbyist type group, these less organized political groups probably never heard of the New Jersey Campaign Contributions and Expenditures Reporting Act and could not understand that their activities, because they worked in groups of two or more, were covered.

"For example, the well meaning groups who charter a bus and descend upon the state capitol to campaign for or against abortion laws, or for a state income tax, or for aid to parochial schools, or the state employees who assemble in a group carrying placards for higher wages or the motorcycle group seeking permission to travel on the Garden State Parkway, all of whom incur expenditures in varying amounts to voice their opinions on these subjects are unknowing violators of the Act." [1]

We urge this Committee, in any lobbying legislation that it does approve, to

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[1] *New Jersey Chamber of Commerce, et al.* v. *New Jersey Election Law Enforcement Commission, et al.*, Superior Court of New Jersey, Chancery Division, Essex County, Docket No. C-2370-73, Kimmelman, J.S.C., July 1, 1975.

explicitly exclude from its coverage all those individuals and groups for whom the burdens of compliance will prove so onerous as to directly impede their effectiveness (and willingness) to engage in lobbying at all. In this connection, we specifically disapprove any definition that is based on the number of lobbying contacts had, and we submit that any monetary threshold be sufficiently high so that the struggling and ad hoc grass-roots lobbyists will clearly be excluded.

B. The inclusion of "lobbying solicitations"

In *United States* v. *Harriss*, 347 U.S. 612 (1954), the Supreme Court had before it federal lobbying legislation that expressly included both "direct" and "indirect" lobbying activities. Indeed, it is clear that that law, as enacted, was intended to cover what the pending bills call "lobbying solicitations"—i.e., organized exhortations to others to contact Members of Congress on pending legislation.

However, the Supreme Court in that case explicitly construed that law to exclude all such indirect lobbying activities, and it then declared that "thus construed," it did not violate the First Amendment. Thus, plainly, the Supreme Court strongly indicated that any Congressional lobbying act that did include such activities within its scope would violate that Amendment.

We agree. In our view, there is a clear distinction between the direct activities of lobbyists seeking to influence a governmental decision and their indirect attempts to solicit and encourage others to be heard on those issues. In the latter instance, the recipient of that solicitation must sill exercise an independent choice in deciding whether to respond to that solicitation, and that decision is in no way controlled or determined by the lobbyist. Moreover, it seems to us that the forced disclosure of such solicitations will still not enable Members of Congress to determine whether or not any particular letter or telegram they receive represents the "spontaneous" views of its sender, and indeed such forced disclosure could well result in the unwarranted discounting of truly spontaneous communications.

Furthermore, the provisions of the pending bills in this regard would seem to include any local committee or membership group that spends as little as $200 to produce and distribute flyers on a busy street corner in any town or city in the country urging one and all to write the Congress on a particular issue. Here, again, it seems clear that the sweeping scope of such provisions renders them far too overbroad and intimidating to pass Constitutional muster.

C. The identification of contributors and members

As indicated above, these pending bills narrow significantly the identification requirements of many of the earlier bills, which is commendable. Nevertheless, they still include the required disclosure of at least some contributors and members, especially with respect to the smallest and poorest of lobbying groups. For the reasons set forth above, we strongly urge that no such disclosure be required in any lobbying bill approved by this Committee.

In addition, S. 2477 requires the identification of all of an organization's "directors," which term is defined as "an individual who is a member of the governing body of the organization." But how would this apply to the ad hoc community group described above? Unquestionably, it seems clear that each of its members would have to be identified—even if they didn't contribute anything to the cause. We strongly oppose any requirement that such individuals be identified as a condition to exercising their right to lobby through such a committee.

III. CONCLUSION

There is no question that "Watergate," and all that that term has come to connote, has held a tremendous impact on almost every aspect of contemporary life. It also seems clear that "Watergate" has helped engender the current interest in lobbyists, including these hearings. To a very great extent, that impact is all to the good, and we want to encourage this Congress—and indeed every branch and level of government—to re-examine all of its practices and procedures so that all improper and questionable aspects can be eliminated. At the same time, however, we respectfully suggest that sometimes the zeal of the reformer can actually lead to excessive and improper "reforms," which could well prove more dangerous and improper than the abuses sought to be corrected. We also suggest that that may well be the case with much of the proposed new regulation of lobbyists.

As we have indicated, we have a number of reservations concerning the propriety and constitutionality of these pending bills. In this statement, we have tried to indicate what some of the most important of those are. However, the fact that we did not specifically mention other areas does not mean that there are none, and we are confident we will be able to provide this Committee with a fuller discussion of those issues if that would be helpful.

The ACLU does not oppose per se responsible legislation addressed to specific lobbying abuses. Indeed, it may well be that specific legislation is appropriate to deal with such potential abuses as the payment of moneys or other things of value by a lobbyist to a public official, or the deliberate misrepresentation by a lobbyist with respect to who he or she represents, or the deliberate misstatement of information by a lobbyist to an official, among other similar "abuses." We do urge, however, that such comprehensive and across-the-board regulation of lobbying that is contemplated by the pending bills could well violate basic First Amendment rights, perpetuate the current negative image of lobbyists, and thus discourage more and even better people from engaging in that essential calling.

And that, we believe, must be avoided.

PREPARED STATEMENT BY HAROLD A. BENSON, JR., GOVERNMENT RELATIONS COMMITTEE, NATIONAL HEALTH COUNCIL, INC.

Mr. Chairman, my name is Harold A. Benson, Jr. I am director of governmental activities for United Cerebral Palsy Associations, Inc. I appear today representing the chairman and members of the Government Relations Committee of the National Health Council, Inc. Accompanying me is Mr. Barney Sellers, director of Government relations for the council. We very much appreciate the invitation you have extended to us to offer our views on this important legislation.

The council consists of more than seventy major national organizations concerned with the health of the Nation.

In addition, since March 1975 the following members have joined the council: American Hospital Supply Corp.; United States Consumer Product Safety Commission; and the United States Department of Defense.

For more than half a century, the national health council has provided a national focus for sharing common concerns, evaluating needs and pooling ideas, resources and leadership services for national organizations in the health field. The council includes voluntary health agencies, professional organizations, insurance companies, civic groups, corporations and agencies of the Federal Government. Its principal functions are: To help member agencies work together more effectively in the public interest; to identify and promote the solution of national health problems of concern to the public; and to further improve governmental and private health services for the public at the State and local levels.

The tradition of the council is one of thoughtful exploration of the Nation's critical health problems, and of action on solutions where possible.

Although we have not had an opportunity formally to canvass our more than seventy members, our board of directors has approved the general tenor of our comments. However, differences of opinion may of course exist and each group is free to communicate its specific concerns directly to the committee. As an "umbrella organization" with a large number of groups as members, we feel obliged to share with you our observations on these questions.

For the purposes of this testimony, it may be helpful to the committee to point out the following. First, almost all of our members are tax-exempt organizations classified either under section 501(c)(6) of the IRS Code—mainly professional health associations—or section 501(c)(3)—mainly voluntary and other educational or charitable groups. More than half are in the latter category. Second, although our members vary greatly in their ability to keep abreast of government activities, most have very minimal resources available for that purpose. Indeed, many rely upon a single person to provide input on all government activities affecting their areas of concern and this person frequently has other duties as well. Third, because a majority of our members are classified under section 501(c)(3) they are restricted under law to an "insubstantial" amount of lobbying activity, an issue which, we will note later, directly affects your deliberations. Last, the bulk of activity undertaken by our members is aimed simply at disseminating

information on what the government is doing, and providing technical assistance to assure that government decisions are as sound and professional as humanly possible.

We presume that the fundamental purpose of the legislation proposed on the question of lobbying is to provide more public information about how government makes decisions, and about the influences that may affect those decisions. We agree with the members of this committee that this goal is worthy of support. Indeed, an objective observer would have to conclude that existing laws governing registration of lobbyists, primarily the Federal Regulation of Lobbying Act of 1946, have been substantially ineffective. Reform is a reasonable goal. We commend you, Mr. Chairman, and the members of this committee, for your willingness to shed more light on how Congress makes its decisions.

But sharing concern about "open government" is not sufficient. The difficulty here is in fashioning an approach which is practical, which does not have a chilling effect upon our first amendment constitutional right to petition the government, and which does not restrict the government's need to have free access to invaluable information in the private sector. We are concerned that many of the proposals being considered by your committee fail to meet these goals. We will confine our comments, however, most specifically to S. 2477.

The recordkeeping and reporting requirements are simply unreasonable. They in effect inpugn the integrity of a process in which the principal activity is gathering information and sharing views. They create a heavy burden for legitimate associations seeking to keep up with government activity and they do so in a manner which is, we believe, counterproductive because they are not capable of being monitored by an enforcement agency. Moreover, the mandate that reports be filed on the issues which may be lobbied, methods of soliciting public support, expenses incurred with regard to all issues covered, samples of each lobbying solicitation, descriptions of procedures used in making solicitations for support, etc., etc., have the result of placing a prior restraint on what should be a free and unfettered first amendment constitutional right to petition our government. This is especially true with regard to registration reports which require information on what issues an organization "expects" to attempt to influence legislation, and how it will be done: In short, what an organization is thinking and what it is going to do.

I believe, Mr. Chairman, that other witnesses before this committee have made these and similar points. Our contribution can be most helpful if we concentrate on the impact of the legislation on tax-exempt organizations, and especially those charitable organizations classified under section 501(c)(3) of the IRS Code.

The code grants tax exemption to qualified groups under the 501 category. Those accepted under 501(c)(3), moreover, by meeting additional requirements are able to receive tax-deductible donations. Organizations in this category are organized and operated "exclusively" for religious, charitable, scientific, public safety, literary, or educational purposes. In order to maintain qualification for this status these groups must agree that "no substantial part of (their) activities . . . is carrying on propaganda, or otherwise attempting to influence legislation." In addition, these groups face an outright prohibition against engaging in political campaigns. More than half of our members are in this category.

Mr. Chairman, we believe the Congress would make a grave mistake and place an unfair, inappropriate, and inequitable burden upon these groups if lobbying registration legislation were to apply to them. Our reasons are as follows:

The IRS Code already places a restriction upon these groups to engage only in an insubstantial amount of lobbying.

The public welfare orientation of these kinds of groups is not the kind which requires monitoring and reporting. Some of our members in this classification include the following associations: American Cancer Society; American College Health Association; American Heart Association; American Lung Association; American Society of Allied Health Professions; and the National Society for the Prevention of Blindness.

These are, for the most part, publicly supported charities. By their nature they are open, visible groups used to operating in that kind of atmosphere.

These organizations include among their members, directors, employees, and advisers, persons with enormous reservoirs of information and expertise in health, science, education, public welfare and related fields. Congress should not force these non-profit organizations to shift their limited resources from program areas to record-keeping and reporting for the Government, nor take any action which threatens the full flow of information to the Congress and the Executive.

Under S. 2477, once an organization passes the minimal communications test all its lobbying activities are supposed to be reported. Therefore, to assure honest reporting an organization would have to keep records for everything from the start of every quarter so that any reporting required at a later date could be complied with completely. Most of our member groups have very limited resources devoted to Government relations activities. In many instances the professional assignment is handled by one full-time person who often has other responsibilities. This is the kind of organizational resource, that is, very limited, that you would be burdening with this demand.

Under the current IRS rule which affects 501(c)(3) groups, commenting on executive branch policy proposals is not included within the definition of "influencing legislation" or lobbying. New legislation for registration of lobbyists which proposes to include this activity will cause great confusion among our charitable groups. We recommend its exclusion.

Finally, and perhaps most importantly, is the impact these requirements are likely to have on the tax status of 501(c)(3) groups and, as a result, on compliance with your proposals. Groups classified under section 501(c)(3) must live up to the IRS insubstantial lobbying rule. But the rule has never been defined. This situation has caused enormous anxiety among tax-exempt groups because no one inside or outside the IRS is able to state with precision the dgeree to which 501(c)(3) organizations can legally communicate with Members of Congress. The only aspect of the rule which is clear is that it does not cover communications with the executive branch. Periodically, health organizations and others are audited by IRS and legislative activity is scrutinized. No one, including IRS agents themselves, fully understands the standards which are being applied. (Indeed, because of this situation we developed a pamphlet attempting to explain and clarify the current IRS interpretation situation. Our first printing of this pamphlet is exhausted, and we believe that is a reflection of the confusion that exists in this area.)

If lobbying registration laws are passed which require not only registration, but detailed reporting, this will place charitable organizations in an untenable situation. Language of the law stating that reports cannot be used by IRS for tax status review, and is now proposed in S. 2477, will have no effect in the real world. Charitable groups will fear that these reports and records will be used by IRS to make judgments about private group legislative activities under a continuing, vaguely-defined rule. The practical result will be that charitable groups will either refuse to communicate with Government officials, or reports will not be filed, or reports will be filed incompletely. Since we believe our organizations to be honest and law-abiding, the most likely impact is to create an enormous brake on any legislative activity, and to restrict Congress' ability to receive information.

We propose, therefore, that charitable groups be excluded from coverage.

If you fail to take this or a similar course of action you will unwittingly penalize both Congress and these charitable groups. You would be treating them inequitably because no other associations, including other kinds of tax-exempt groups, face this same legal limitation on lobbying. We ask only that these groups be treated fairly. If a registration bill were to be approved and signed, 501(c)(3) groups could be included after legislation defining "substantial" is approved.

We have taken the liberty of sharing with the staff of this committee proposed language which could be added as an amendment to S. 2477 to achieve our suggested goal.

We have some other, more technical, observations about the bill and have shared them with the staff. Thank you again for asking us to share our views with the committee.

Chairman RIBICOFF. Professor Monaghan.

TESTIMONY OF HENRY P. MONAGHAN, PROFESSOR OF LAW, BOSTON UNIVERSITY

Mr. MONAGHAN. S. 2477 is a substantially strengthened replacement for existing Federal lobbying legislation. It is a lengthy and complex bill.

Speaking generally, the constitutional problem it raises may be grouped into two categories: Those going to substance, in particular questions related to sections 4 to 7; and those going to enforcement, in particular sections 9 to 12.

I have been asked to submit my views with respect to the first category—in other words on the question relating to the first amendment.

Before doing so I would make one comment about the enforcement provisions. Housing those provisions in the Comptroller General requires some careful consideration and involves risk in my judgment.

The argument will be made that the Comptroller General is essentially a legislative official and, as such, he has no business in enforcing the law, particularly in suing in the courts. That argument cannot be summarily rejected, given the present confusion, indeed the virtual breakdown, of separation-of-power theory in this century.

My principal concern is with the substantive provisions—with sections 4 to 7 of the bill. I start from the following premises: Despite a rather widespread contrary belief, lobbying is an honorable undertaking; indeed, lobbyists serve an indispensible role in the workings of our scheme of representative government.

Lobbying must, therefore, be taken to be an activity which is generally protected by the first amendment. This does not mean, however, that the lobbying process is not subject to disclosure regulation.

Quite to the contrary; given the capacity of lobbyists to affect the legislative process some disclosure is necessary in order "to maintain the integrity of a basic governmental process." *United States* v. *Harriss*, 347 U.S. 612, 625 (1947).

Here, as elsewhere, "sunlight is * * * the best of disinfectants. Electric light the most efficient policeman." But the general relevance of the first amendment is that any congressional regulation aimed at disclosure must be to vindicate compelling governmental interests and must not sweep too broadly.

The first amendment objections to S. 2477 kind of legislation are, by and large, two. First, the disclosure provisions—registration, section 5 and reporting, section 7—invade a privacy which the Supreme Court has consistently recognized as a penumbral aspect of the first amendment.

And, second and most important, that the registration, reporting, and recordkeeping—section 6—requirements are so burdensome that both the cost and the sheer amount of paperwork involved will unreasonably chill the exercise of the right to petition.

I do not see that the privacy claim in this area is substantial at least in the general application of the bill; in any event that right is not absolute and must yield where, as here, there is a compelling governmental interest in the disclosure.

As to the second objection—too much administrative redtape—the section 4(d) exclusions are a praiseworthy effort to exclude those situations in which this objection would have particular force.

The real question is whether section 4(d) does all that it should. The core of this bill is constitutionally sound in my judgment. *United States* v. *Harriss*, supra, a case the authority of which has never been undermined, makes that plain.

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But that still leaves important questions concerning the outer limits of coverage. That matter deserves your careful attention. Its resolution depends upon a knowledge about and experience with lobbying that I do not pretend to possess. But I would urge a general approach informed by caution. Doubtful coverage issues should be resolved in favor of nonregulation.

Let me focus on specific matters. In so doing, I view my role as simply inviting your attention to those parts of S. 2477 which, I think, warrant some hard scrutiny.

1. Registration. So far as S. 2477 applies to the paid lobbyists; I find it difficult to see that the registration provisions pose constitutional questions of substance.

So far as the bill embraces organizations engaging in a significant number of lobbying communications within any 3-month period, the matter is on principle no different.

The right to petition Congress does not import a corresponding right to do so in secret. But the registration requirements do impose some burden, and so the question is whether the provision triggering coverage—section 4(f) (1)'s 12 "oral lobbying communications"—is too undiscriminating a measure.

Put differently, you should require some demonstration of why the 12-contacts figure was chosen as an across-the-board measure.

For example, instead of such an approach differential tests might be established depending upon such factors as whether the organization is a corporation or a local voluntary organization, and, if the latter, whether it has a paid staff or not.

If the present coverage formula is retained, there should be some evidence in the legislative history on why this was done; if the decision rests, in part, upon congressional expertise and experience, the basis thereof should be at least articulated in the legislative history. Most desirable, of course, is explicit legislative findings in the bill itself regarding this matter.

Finally, a comment with respect to the "indirect" or grassroots lobbying coverage. Lobbying of that character is, I am informed a matter of acute congressional concern and therefore some disclosure is imperative to the proper functioning of the legislative process.

The Supreme Court has expressed no doubt about congressional power to require some disclosure in this area. United States versus Harriss, supra, at 620.

But, once again, the crucial considerations become the inclusion points: would the major congressional concerns be satisfied if the coverage provisions of sections 4(f) (2) and (3) were modified to embrace only grassroots lobbying on a larger scale?

Should distinctions be drawn in terms of who—for example, a large corporation or a small voluntary membership organization with no paid staff—is doing the solicitation. I do not know the answer to these questions. Once again, however, I would urge that the legislative record contains evidence, and—if possible—the bill findings on this matter.

2. Recordkeeping. Section 6 is obviously borrowed from New Deal regulatory statutes governing business. This section requires attention. The general provision permitting examination by the Comptroller

General raise problems. While it is true that, in the past, neither the fourth nor the fifth amendments have been thought to impose real limitations in the recordkeeping context that day may come to an end, given the great current judicial and academic interest in administrative rulemaking as a way of structuring the exercise of apparently open-ended legislative delegations.

In any event, the first amendment would seem to me to require a much more structured exercise of the examination power by the Comptroller General.

My suggestion is that the Comptroller General be required to make specific rules governing the exercise of his examination powers under this section.

3. Reporting. I do not doubt as a general matter that the same considerations which support registration also support a requirement of periodic reporting.

Nonetheless, since the reporting provisions—particularly when coupled with section 6's requirement of recordkeeping "in accordance with generally accepted accounting principles"—are considerably more burdensome than the registration provisions. The amount of paperwork is, accordingly, increased, and it seems to me, therefore, close consideration ought to be given whether to lighten the burden of section 7.

I have no real difficulty with sections 7 (a) or (b) which governs paid lobbyists. But sections 7(c) and 7(d) raise problems. Again, the problems here are ones of judgment and degree.

Again, therefore, evidence, or the basis of any congressional experience, should be spread upon the legislative record.

In the absence of either, let me express my own concerns. First, it seems to me that with respect to section 7(c)—organizations which contact Congress—that attention be given to differential reporting requirements.

For example, voluntary membership organizations lacking a paid director and which do relatively little lobbying might be permitted to furnish either less information; or the required information might be furnished in combination with the annual registration statement, not on a quarterly basis.

Second, section 7(d), which is applicable both to paid lobbyists and the organizations engaged in lobbying solicitation, is troublesome. My inclination is that some distinctions should be made. With respect to small voluntary organizations, the requirement of sections 7(d) (2) and (6) seem to me to have a utility not visibly commensurate with their costs.

Chairman RIBICOFF. Frankly, I have read your testimony, and I like many of your suggestions.

Would you be willing to submit some language to carry out some of your recommendations? That goes for you also Ms. Eastman.

Ms. EASTMAN. I would.

Mr. MONAGHAN. I would be.

Chairman RIBICOFF. I am impressed with much of what you say. As a matter of fact, it fits in fairly well with the comments of the other four witnesses this morning.

Mr. MONAGHAN. I think it does. I don't view this as antithetical. I would say, and I want to make it very clear, that I think this is a

good bill, and on the whole, the Supreme Court would sustain it. But we are talking about the outer rim of coverage.

Chairman RIBICOFF. I am concerned, too, of placing a great burden on many of these voluntary organizations that are really probono publico, and they stand as a minority often alone against public opinion and large organized groups with much to spend. I am very anxious not to destroy organizations such as that.

But as I gather from other witnesses, you are concerned there is language in this bill, and some of these provisions, that would be counterproductive.

Mr. MONAGHAN. I don't say the bill would not survive in Supreme Court.

Chairman RIBICOFF. I am not interested basically in legalisms. I am interested in what we are trying to achieve.

Mr. MONAGHAN. Do the costs outweigh the gains? Is what you are really concerned with?

Chairman RIBICOFF. Let me just make one last comment. With respect to the report provisions of the act, I mean with respect to the recordkeeping provisions of this act, now, this recordkeeping provision in section 6 is drawn obviously from regulatory statutes covering businesses.

Mr. MONAGHAN. This section requires considerable attention by the Comptroller General.

I would suggest, Senator, the Comptroller General be required by statute to make specific rules governing the exercise of his powers under section 6.

I think that is about the conclusion of my prepared comments.

I don't think I differ a great deal in terms of what was said before.

Chairman RIBICOFF. Well, I want to thank you, Professor. I think you have made a great contribution. I think you have helped me in my own thinking.

I am inclined to a great extent to some of your suggestions. If you would be willing, would you submit some language that would put into effect some of your recommendations?

Mr. MONAGHAN. I would like to talk to your staff about it, the way it should be done.

Chairman RIBICOFF. You are the last witness and I am sure the staff—did you come down from Boston?

Mr. MONAGHAN. I came down from Boston.

Chairman RIBICOFF. There is no sense in making you take another trip. The other witnesses are from Washington.

So, as long as you are here, and you are the last witness today, this may be a good opportunity to have an informal chat with the members of the staff. We would welcome your contribution.

Mr. MONAGHAN. Fine.

Chairman RIBICOFF. I do appreciate your coming here for this, and the committee will stand adjourned until tomorrow morning at 10 o'clock.

[Whereupon, the hearings were recessed, to resume at 10 o'clock the following day.]

LOBBY REFORM LEGISLATION

THURSDAY, NOVEMBER 6, 1975

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met pursuant to notice at 10 a.m., in room 3302, Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman) presiding.

Members present: Senators Ribicoff and Metcalf.

Staff members present: Richard Wegman, chief counsel and staff director; Paul Hoff, counsel; Marilyn Harris, chief clerk; and Elizabeth Preast, assistant chief clerk.

Chairman RIBICOFF. The committee will be in order.

At this point we will insert the prepared statements of Senator Metcalf and Senator Muskie in the record as if read.

OPENING STATEMENT OF SENATOR METCALF

Senator METCALF. I am delighted, Mr. Chairman, that you scheduled additional hearings on lobbying disclosure proposals pending before the committee. I am disappointed, of course, that I had out-of-town witnesses appearing before my Interior subcommittee and could not hear the testimony during the first 2 days of these hearings.

As I am sure you know, sensible, meaningful, and enforceable disclosure requirements are not easily come by. There are many pitfalls in this area, not unlike those we have encountered in attempting to regulate campaign spending.

The question of first amendment rights, of equity in determining who must register as lobbyists and file periodic reports, of what kinds of information about lobbying activities actually are essential to the public interest—all must be given careful attention.

Let there be no misunderstanding about this. Registration and reporting entail costs which many groups in our society can ill afford. And these costs go well beyond the dollars and manpower that must be diverted to meet such requirements, including not only public relations values but also the competitive disadvantages involved in disclosure of detailed lobbying strategies.

The public interest will be badly served if a multitude of small, locally based, and poorly funded groups—the church groups, school and neighborhood associations, business and service clubs, veterans organizations and the like—are required to pay these costs. And it will be a travesty if the only effective means such groups have of getting their message across are tightly covered, while a host of large, well financed, nationally based organizations are permitted to slip through the disclosure net.

What we need to know, to preserve the integrity of Congress and to serve the public interest, is first, the identity of agents who are being paid significant sums to speak on behalf of others; and second, the identity of organizations which employ lobbyists to influence decisions of interest to them in the legislative and executive branches.

My bill (S. 2068) makes a clear distinction between the smaller "grassroots" groups, without paid staff employees, and those organizations which expend significant amounts to employ lobbyists.

Thus, contrary to some of the statements presented here yesterday, S. 2068 will not require an ad hoc group of a dozen or so citizens, each of whom contributes $25 to send one of their number to Washington, to register as a lobbyist, to comply with the bill's reporting requirements, or to place the names of those individuals contributing on the public record.

I am convinced that we can establish sensible disclosure requirements without massive Federal intrusion into the activities of private organizations, and without generating a glut of essentially meaningless reports from smaller groups whose activities are neither sustained nor disproportionately influential.

We can provide for meaningful disclosure without either constraining in any way what are perfectly legitimate expressions of opinion or diminishing in any way the capacity of Congress to serve as an intermediary between the people and the Federal bureaucracy.

We can enact a statute that can be enforced without the issuance of voluminous and detailed regulations by the administering agency—as has been the case with campaign spending "reform"—and without getting into the ridiculous posture of having to either "count" or "log" phone calls, office visits, casual hallway conversations, and the like.

We have made some progress over the past several months, since the committee first held hearings on lobbying disclosure. But we still have a long way to go. In my judgment, none of the bills we are considering today—including my own—deal satisfactorily with the basic questions raised by disclosure legislation.

While I have been unable to attend the hearings, I know from the prepared statements that the witnesses over the past 2 days have contributed a great deal. It is my understanding, Mr. Chairman, that you have asked several of them to meet with the staff and to suggest language insuring that we do not cast a disclosure net too widely, further limiting the capability of "grassroots" and Main Street groups to be heard here in Washington.

It is my hope, Mr. Chairman, that we will not rush into markup before the suggestions of these witnesses and others who share your concern can be given careful consideration.

OPENING STATEMENT OF SENATOR MUSKIE

Senator MUSKIE. Mr. Chairman, I want to commend you for your leadership in pulling together this lobbying bill from the numerous proposals that have been introduced this year.

As you know, I have joined as a cosponsor of S. 2477 because it represents an effective and workable compromise measure. I am pleased that it incorporates many of the strong provisions embodied in the proposal introduced in July by Senator Javits and myself.

For far too long, we have tolerated the explosive growth of public and private organizations and interest groups that influence Congress. In effect, they have helped shape the destiny of our Nation, and yet have remained beyond the reach of public scrutiny. Some estimates indicate that more than $1 billion a year is spent on lobbying and yet not more than one-tenth of 1 percent of that figure is reported under the current law.

The bill before us would correct much of that problem, and bring lobbying out of the dark recesses of secrecy into the sunshine of public scrutiny.

I'd like to discuss briefly the strong points of this bill.

First, it provides for vastly improved enforcement of lobbying requirements.

We all know that enforcement now is a dead letter. Since 1946, only four prosecutions have been brought against violators, the last one in 1956.

This bill would empower the General Accounting Office to receive and audit reports, hold hearings, issue injunctions, and initiate civil actions. This would bring lobbying under the purview of an experienced, well-staffed agency.

In addition, the Justice Department would be empowered to bring criminal actions against violators.

Second, the definition of lobbying and lobbyist is now a realistic one.

Under the current definition, most lobbyists and lobbying organizations can claim that lobbying is not their "principal purpose," and therefore do not register or report expenses.

The new definition requires all those with a certain minimum number of contacts with Congress must register, so that most lobbying will be reported. It also covers grass-roots lobbying that is mobilized by interest groups.

In exempting individuals who lobby on their own behalf, this new definition also protects first amendment rights.

And third, the reporting requirements of this bill strike a good balance between maximum disclosure of lobbying activities and a minimum of paperwork burden for lobbyists.

The provisions would make available to the public and Congress an accurate accounting of the spending, organizations, and individuals involved in influencing the outcome of legislation.

Mr. Chairman, I know that we share the view that lobbying per se is neither evil nor undesirable. We depend on the information and points of view of organizations and individuals to help make decisions. We could not properly function without lobbying.

But while we need different points of view, we also need to know their source. When we get a flood of letters on an issue, we must know if it springs from a spontaneous wide-based impulse or a well-orchestrated drive by a handful of lobbyists.

When we see all around us intensive lobbying on an issue, we must know the source of money for the lobbying.

In short, Mr. Chairman, we must seek not to discourage lobbying, but simply to make it open and aboveboard.

The American public—tired of politics as usual—demands this kind of reform. And it is up to Congress to accomplish this reform in the fairest, most effective manner possible.

Chairman RIBICOFF. Are there any witnesses who are supposed to testify today here in the room? Do we have the representatives of the State and local officials here?

TESTIMONY OF HON. ROBERT WASHINGTON, VIRGINIA HOUSE OF DELEGATES, CHAIRMAN, TASK FORCE ON COMMUNITY DEVELOPMENT AND TRANSPORTATION FOR THE NATIONAL CONFERENCE OF STATE LEGISLATURES; HON. WILLIAM HANNA, MAYOR OF ROCKVILLE, MD., NATIONAL LEAGUE OF CITIES AND NATIONAL CONFERENCE OF MAYORS; FRANCIS FRANCOIS, CHAIRMAN, PRINCE GEORGES COUNTY COUNCIL, MEMBER OF BOARD OF NATIONAL ASSOCIATION OF COUNTIES; AND RALPH TABOR, ASSISTANT EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF COUNTIES

Mr. FRANCOIS. Yes, Senator.

Chairman RIBICOFF. Gentlemen, will you tell me what bothers you about this legislation? How does it interfere with the proper operation of your cities and your State? What changes do you believe there should be in this legislation?

Mr. FRANCOIS. Yes, Senator. If I may lead off, I will be pleased to.

My name is Francis B. Francois. I am chairman of the county council in Prince Georges County and a member of the board of directors of the National Association of Counties. I am here representing that organization.

For the record I would like to introduce our official statement. I will not read it.

I have also been asked, Senator, to introduce Governor Noel's statement [1] into the record.

Chairman RIBICOFF. Without objection, all statements will go in the record as if read.

Mr. FRANCOIS. To get to the topic: What bothers us about the legislation is we feel that, as it applies to the National Association of Counties, it is improper. The reasons are these: The National Association of Counties, itself, is the official representative of some 1,400 counties nationwide of the 3,000 and some counties that we have. It is the voice of our counties in Washington and accounts on our behalf before this body, before the House, before the President, the various executive departments of the Federal Government.

We find that the National Association of Counties is the only way that local governments, local county governments, can have an effective voice in the Federal process; and we think it is very important that we have that voice. My county, of course, is a large one. In Prince Georges County we have an annual budget of some $400 million. And I live right outside of Washington, and it is no problem for me to get down here and to make my case known. But even with that, I find it impossible on my own to fully cover all the issues that do occur on Capitol Hill. Nor do the employees of Prince Georges County have the time that it takes. Even with the expertise that we have, we are far better off than the majority of counties in this Nation.

[1] See p. 540.

When we get out to where I come from, for example, I am a native of the State of Iowa, which has 94 counties, most of them very small in population, none of them with the budgets to allow their county supervisors to come to Washington on every issue; even if they could, and certainly not their employees because the employees simply do not have that kind of money. So the only way in which we can be effective within the Federal process is through the National Association of Counties.

Chairman RIBICOFF. Having been a Governor, I am well aware of what you do and what your problems are. Do your organizations stimulate letter writing campaigns from your constituents?

Mr. FRANCOIS. Only from our county officials, themselves.

Chairman RIBICOFF. The county officials, but not the people who live in your counties?

Mr. FRANCOIS. Some of our county officials, quite honestly, in turn, I am sure, generate letter writing campaigns. I do not doubt that at all. I have done that on occasion, myself.

But with respect to the National Association of Counties, it is funded——

Chairman RIBICOFF. Do your employees lobby? The people on your permanent staff, are they up on the Hill talking to agencies, talking to Congressmen, Senators, and the executive branch?

Mr. FRANCOIS. Yes, they are. They most certainly are.

Chairman RIBICOFF. Do they file expense accounts for luncheons, entertainment, and the like?

Mr. FRANCOIS. Within the NACO organization, they do, yes; and the NACO budget, itself, is a public budget funded out of public funds. To the extent that they have expenses, they are fully accountable within NACO to the local governments and the public.

Chairman RIBICOFF. Anyone can come up. Do you publicize your balance sheet and expenses?

Mr. FRANCOIS. It is available and it is publicized. It is certainly available to anyone who wants it.

The balance sheets, themselves, are publicized in that the annual budget is publicized in the NACO newspaper.

Chairman RIBICOFF. The total budget for lobbying in Washington, do you have any idea what that amounts to?

Mr. FRANCOIS. We carefully keep our lobbying operations separate from our other operations.

May I introduce Ralph Tabor, assistant executive director.

Mr. TABOR. In the case of the NACO, we have a budgeted amount that is strictly for my department, "Federal affairs," of about $500,000.

In addition to that we have about $300,000 that is spent for our publication of our county newspaper, which is a weekly, and other publications that are going out. It would be very difficult to separate out the publications——

Chairman RIBICOFF. How much of that is informational for the members of your organization, and how much is expended for your contacts with Members of Congress?

Mr. TABOR. In our case, sir, it would probably be at least 80 to 90 percent. We are giving information, mostly. Even the many times when we are coming up talking to you or to the members of your committee staff, we are asking for information which we are then transmitting back to our county officials.

Chairman RIBICOFF. Mr. Hanna or Mr. Francois, what is there about this bill in particular that concerns you? How would it interfere with your operations?

Mr. FRANCOIS. One phrase specifically concerns us. That is that elected officials and our direct employees are, of course, exempt; but our indirect employee, NACO, are not. We do not see the difference between NACO staff and somebody on my staff. In both cases they are doing what I want done. That is what bothers us.

As far as the reporting procedures and so on, I am quite certain we could live with them. I do not see them as that onerous. But I do see the principle as very onerous.

We are public officials, just as you are. We believe we are part of the Federal process. We regard NACO and its lobbying role as our employee for all practical purposes. That is our problem.

Chairman RIBICOFF. Mr. Hanna, do you want to say anything specifically?

Mayor HANNA. Yes, sir, if I might. I am Bill Hanna. I am mayor of the city of Rockville, Md., just up the street a bit from you folks. We are the second largest city in Maryland. I am here speaking for the National League of Cities and for the U.S. Conference of Mayors.

First of all, to answer the question you addressed to Mr. Francois, the league budget is roughly $1.5 million collected through dues from the member organizations, which number approximately 15,000 cities, as far as the league is concerned. And I guess some 350, something like that, cities for Conference of Mayors.

Of that amount, again, a rough estimate is about $300,000 which goes to the legislative activity.

Our problem with the legislation is that we are not specifically excepted from it. We feel that just as your job is to legislate the national policy, our job is to make sure that you hear our voices, and 15,000 separate voices become very muffled. Our job at the league and the conference is to make sure we provide a unified voice to express ourselves to you so you do not have to address yourself to 15,000 individual entities.

We feel that if we are under this bill, it is definitely going to cause us much additional paperwork. It is going to add nothing to the process of improving government, and it is going to interfere with our timely operation of providing a good, solid voice to you as to what the cities of this country feel should be national policy.

I am well aware that the Congress is most interested in knowing what the cities do feel. Our effort is to provide some way that we can speak together. The 15,000 cities cannot come together and line up in front of your committee or any other committee and tell you how we feel about any particular item.

Chairman RIBICOFF. My feeling is that the attitude toward cities and States is not sufficiently heard. I think you've got a tough enough job to make your points of view known in Congress. I think Congress has been too indifferent to the problems of the cities of America. I would like to hear more from the cities than less. I do not want to muffle the voice of the cities.

You all represent, in one way or another, the public in trying to make your voices known to Congress as a whole. I would guess that I don't find any difficulty in knowing what the mayors of the State

of Connecticut are thinking. They let me know, they write me; they call me on the telephone. I know them and I see them.

Yet I recognize that they are not informed as to what legislation is before the Congress that would vitally affect their interests.

It is pretty hard in writing a lobbying law to just separate the good guys and the bad guys. How do we say: These are the good guys and these are the bad guys?

In other words, environmentalists, the other public interest group who lobby for their position, the manufacturers' association, the chamber of commerce and labor unions have a right to lobby for their positions. It is a question we are concerned about. Are there rules and regulations here that are onerous?

Mr. Francois evidently indicates that he could live with some of the regulations.

Mr. FRANCOIS. I think we could live with them, Senator. They obviously would impose a further burden on us and are going to increase costs.

Chairman RIBICOFF. It will put a burden on everybody, you know.

Mr. FRANCOIS. Obviously.

Chairman RIBICOFF. I am interested in any burden that we are imposing on you, is it too onerous or unfair? Would it frustrate and make your jobs that much harder? Would you be unable to get your point of view across? You are not worried, as I understand it, that the Congress or the public know what you are doing. You are not hiding your activities.

Mr. FRANCOIS. No. I think the last point you mentioned does concern us. It is: Will we get our point across? I think when you divide out the elected officials of this country and put them in the same category as the nonelected lobbying groups, you do make it much more difficult for us to get our points across. It is putting us outside the governmental family, rather than within it.

I think that is the critical difference we are trying to point out, that, unlike even other public interest groups, environmental organizations for example, they do represent a point of view. But it is not the elected officials' point of view. We are part of the elected government of this Nation, the Federal, the State, the local elected government of this Nation, and are part of the process. Not apart from it.

I think that is the critical difference that has us concerned. As soon as we get classified with the other interest groups, be they public or private, who are regarded as being outside the governmental process, then whatever we offer is viewed we think, in a different light because we then are regarded as being just another lobbyist, rather than as being integral elements of government trying to work with the other elements of government to solve problems.

Mayor HANNA. Yes, sir. If I could pick up on that same point, we really feel that there is a constitutional issue involved here as far as State and local officials are concerned. We are duly elected, just as the Members of Congress are; and we feel that, to the extent that it is possible to say there is a voice of the people, we represent, at least in some particular time frame that we occupy the positions we occupy.

Next to the individual citizen, himself, we are the people. In that sense the associations we are talking about are instrumentalities of

us, direct extensions of us and, as such, do not represent the same relationship that we feel that private organizations have who definitely are for private interests. We represent the public interest. The league and conference represent the public interest. They are merely a funnel of the combined voice of that public.

Chairman RIBICOFF. Take revenue sharing. I do not blame you for trying to put your point across. You have a meeting here in Washington on November 18. Now, do notices go out to just the county officials?

Mr. FRANCOIS. Yes.

Chairman RIBICOFF. Are you having people come in who are not officials?

Mr. FRANCOIS. No. The only invited people coming are the elected officials. They are the only people who will be allowed to take part in the rally, because we feel they are the only ones who speak for the governments.

Revenue sharing is a very good example of what we are talking about.

Chairman RIBICOFF. There is nothing hidden about a pamphlet like this. [Indicating.]

Mr. FRANCOIS. No, there certainly is not, nor will there be when we get here.

Chairman RIBICOFF. You are asking your members to contact your congressional delegation. This is absolutely proper.

Mr. FRANCOIS. But that is an excellent example. The message still has not gotten through to many local officials, despite the fact NLC and NACO are trying to get it through, that revenue sharing has problems on Capitol Hill.

Many of our local governments are depending on those dollars to operate their budgets. My own government, for example, if revenue sharing is not passed by next May 15, will have to raise real estate taxes 41 cents to compensate for the $14 million that we are now getting. It is very difficult now, in other words, for us to get the message through. We have to complicate it by, (a) becoming lobby organizations; and (b) going through all the reporting forms and so on. It makes it that much more difficult for us to work.

Chairman RIBICOFF. Have members of your Washington staff been in contact with the committee staff to discuss your problems?

Mr. FRANCOIS. Yes; they have, Senator.

Mayor HANNA. Yes; they have, Senator.

Mr. FRANCOIS. And will be again at your pleasure.

Chairman RIBICOFF. We are anxious to get a good bill. We do not want to restrict the opportunity of people to have their points of view made known. We just want an accurate account of things that have been done by lobbyists.

Mr. FRANCOIS. No question.

Chairman RIBICOFF. We are concerned not to overburden underfunded organizations who work in the public interest to make their point of view known. We don't want them to be so bureaucratized that they can never make their point of view known to the Congress or the Governors or the mayors or county officials, because the lobbyists who work for special interests know how to get to public officials. The average person does not.

Do you have any specific questions, Senator Metcalf?

Senator METCALF. Thank you, Mr. Chairman. I had to preside over the Senate for a half hour this morning and did not get over here until late. But the chairman knows of my interest in and concern for this legislation.

Chairman RIBICOFF. May I say that Senator Metcalf has a bill. In many ways there are features in it that I think are much better than mine. We are all trying to work this out to finally get a bill that has some meaning and, yet, not prevent the voice of the people from being known.

Senator METCALF. May I say that I am very much concerned that too rigorous a lobbying bill would prevent your voices, as spokesmen for the State, county, and city governments, from being heard and prevent the Members of Congress, both in the House and the Senate, from effectively representing our States and our communities.

Some European countries have established an office of ombudsman. I sent my administrative assistant for 6 months, under an American Political Science Association fellowship, to study the work of these offices. He came back and said, "You know, we have a built-in ombudsman—the Members of the Congress, who are the ones that are answerable to the cities and the towns."

What we are talking about this morning, is a different type of lobby from that of, say, the Anaconda Co. or other similar interests which are represented here.

As Senator Ribicoff has said their representatives are skilled. They have been here a long time. They know how to make the necessary reports and they have the resources to go through this process year after year. But we do not want to make it difficult for you people to come up here and express the concerns of your constituents, who are our constituents, too.

Mr. FRANCOIS. We appreciate that, sir.

Chairman RIBICOFF. We know what you are driving at. I certainly do not want to make it hard for any mayor or legislator to be able to reach me. I would guess probably 40 to 50 percent of our time is used to take care of the problems of our local communities.

To make it hard for our local leaders to reach us is exactly what we are trying to avoid.

Mayor HANNA. Gentlemen, if I could add one more word, I think you would appreciate the fact that there is nothing that an elected official, regardless of the level he occupies, is more jealous of than the fact that no one is going to speak for him unless the spokesman is actually part and parcel of him. We wish for no intermediaries, and we consider the League and Conference as our own voices. If we did not, I think we would disband them tomorrow, if they did not represent us as voices. So by our greatest test in terms of appropriateness; namely, do they really speak for us, they answer that question, "yes." In that sense I think they truly represent us, and we would not permit them to exist if they did not.

Chairman RIBICOFF. Mr. Washington, do you have anything to add?

Mr. WASHINGTON. I apologize, Senator, for coming in late this morning and not having heard the prior testimony. I would imagine many of the points I would have made have probably been covered.

Chairman RIBICOFF. Your entire statement will go into the record at the appropriate place.

Mr. WASHINGTON. I would simply emphasize that I strongly support the position that our organization, the National Conference of State Legislatures, is representative of the members of the legislatures of the various States, supported by public funds totally, appropriated by the State governments and acting as an extension of our personal staff, in a sense. Taken from that point of view it seems to me inappropriate that an organization of this nature would be subjected to the same kinds of regulations that other kinds of agencies would be.

Chairman RIBICOFF. I am completely sympathetic to your point of view. We will take a hard look at this to see what the problems are. You can rest assured that this committee is not going to put anything in this bill that makes it impossible for another agency of government to make their point of view known to the Congress of the United States.

Mr. FRANCOIS. Thank you very much, Senator.

Chairman RIBICOFF. I do appreciate you gentlemen coming here. It has been very important, because you have highlighted some problems. The only way we are going to know what to do is if we get the input from people from yourselves. Thank you very much.

Mayor HANNA. Thank you, Senator. We appreciate your efforts in this area.

Senator METCALF. Mr. Chairman, you know that I am very much interested and concerned with these hearings. I was unable to appear in the first 2 days because I had some mining people from out of the State in the Interior Committee. I held hearings on those 2 days in that committee.

But I would have put a statement in the record had I been able to attend. I ask your permission and the Members' consent to incorporate my opening statement [1] on the general lobbying reform provision and some of the comments on my bill that you talked about a moment ago, and I asked that it be included in the record.

Chairman RIBICOFF. Without objection, it is so ordered.

Senator METCALF. Thank you very much.

[The prepared statements of the first panel of witnesses follow:]

PREPARED STATEMENT OF ROBERT WASHINGTON, HOUSE OF DELEGATES, VIRGINIA

Mr. Chairman, I am Robert Washington, member of the Virginia House of Delegates and chairman of the Community Affairs Task Force of the National Conference of State Legislatures. I am pleased to have this opportunity to appear before this committee with my colleagues from the major public interest groups of State and local government elected officials. First let me say that I would like to submit for the record the testimony of Governor Noel. He has, I believe, fully described the point of view of State and local elected officials. I wish to add emphasis to a few of the points which he has made.

In the lobbyist disclosure bills now under consideration you have exempted activities of officials of State and local governments acting in their official capacities. This exemption is proper and founded on a recognition of the necessary interaction by elected officials at all levels of our Federal structure. We have come here today to request a single amendment to the proposed legislation: that the exemption just referred to should be expanded to include officials of national organizations of State and local elected officials.

[1] See p. 495 for Senator Metcalf's opening statement.

I believe this point can be best understood if you consider how one such organization operates. The National Conference of State Legislatures is funded by appropriations of public funds by State legislatures. A principal reason for legislatures appropriating these funds is taken from a statement of the National Conference of State Legislatures' objectives: "To assure States a strong, cohesive voice in the Federal decision-making process." The National Conference of State Legislatures is strongly committed to the direct and timely involvement by State legislatures in Federal decisions which may affect State policies and programs or create a need for additional State appropriations. The principal vehicle which we use to provide input to Federal decision-makers is an intergovernmental relations committee composed of over 500 State legislators from every State. This committee is composed of 9 task forces in such broad areas as human resources and government operations. This committee adopts policy positions on substantive issues on behalf of all 7,600 State legislators. This policy is presented to Congress and the administration by legislators, staff from State legislatures or staff from the Washington office of the National Conference of State Legislatures. I am proud to have been chairman of one of these task forces for the past two years. I assert that it is illogical to exempt myself or my personal assistant from this act, yet require the staff of the National Conference of State Legislatures to register as lobbyists for providing the same material, or arguing the same point. Our Washington staff takes *no position* which has not been approved as policy by elected State officials.

Allow me to offer another illustration of the seeming inconsistency of the approach suggested by this bill. The legislature of Michigan is currently the only State legislature which has a full-time representative in Washington. This representative performs, in every sense, the same basic functions as the staff of the National Conference of State Legislatures as he relates to congressional and administrative agencies. Yet under your proposed legislation he would be considered as *directly* employed by his legislature where our National Conference of State Legislatures' staff would not be *directly* employed. He would not be required to register under the proposed act.

Another example is a group called the New England Caucus. New England Congressmen have pooled resources and hired staff to study issues of particular interest to that region. Their staff is paid with funds appropriated by Congress to perform a function not unlike that which our organization's staff performs. Surely you would not have that staff register as lobbyists!

Virginia is one of over twenty States which has passed lobbyist disclosure acts in the past three years. These laws differ from State to State, but this committee may find the record of enforcement in those States informative as you complete work on your own legislation. For example, the Virginia bill is an example of how effective such legislation can be.

As an officer of a national organization of elected officials, the issue which has brought us here today troubles me. I had thought this issue was settled by Judge Gesell's district court decision last year, which is described in Governor Noel's testimony. Now we are before this committee urging you not to overturn that ruling. I foresee many difficulties resulting from the passage of the provisions now before you. The National Association of Elected State and Local Officials will incur additional public expense satisfying administrative requirements by the law. State and local officials may be required to take more of their time from pressing local problems to journey to Washington to represent their opinions, and the "spirit" of our Federal system will suffer.

I believe that most members of Congress value the opportunity to hear the point of view of other elected officials and do not intend to work hardships on State and local elected officials who have organized national associations to represent their views. You may recall that Congress recently faced a problem similar to the one which State legislatures face with this legislation. In that situation, Justice White, ruling for Congress, stated, ". . . It is literally impossible, in view of the complexities of the modern legislative process, with Congress almost constantly in session and matters of legislative concern constantly proliferating, for Members of Congress to perform their legislative tasks without the help of aides and assistants: that the day-to-day work of such aides is so critical to the members' performance that they must be treated as the latter's alter ego . . ." (Gravel vs. U.S., 408 U.S. at 616)

In conclusion, I believe it is worth noting that 200 years ago the then 13 State legislatures organized themselves into a United States and created a Federal government of which this Congress is a part. Until the early part of this century,

State legislatures directly elected the Senate of the United States. Yet today, I come before you to suggest that the 50 State legislatures, which have created a single national association to represent their views before the Federal government, should not be required to register the employees of that national association as "lobbyists." I submit that such an action differs substantially, and historically, from the laudable action proposed in this legislation to regulate activities of persons representing private interests, however broad or styled to be in the public's interest.

Thank you, Mr. Chairman, for the opportunity to express our views before this committee.

PREPARED STATEMENT BY WILLIAM HANNA, MAYOR OF ROCKVILLE, MD., ON BEHALF OF THE NATIONAL LEAGUE OF CITIES AND THE U.S. CONFERENCE OF MAYORS

Mr. Chairman, members of the Subcommittee. I am William Hanna, Mayor of Rockville, Maryland. I am here today to testify on behalf of the National League of Cities and the U.S. Conference of Mayors on H.R. 15, 1734 and 6864—proposals which would revise the federal law on lobbying activities. As my colleagues have already indicated, we too are opposed to the proposed legislation as it pertains to local officials and their organizations not only on Constitutional grounds—and those points have ample judicial precedent and deserve serious reconsideration—but on the potential effects on our intergovernmental relationships.

The concept of "federalism" represents, if I may quote Justice Black in *Younger* v. *Harris*,

". . . a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States."

Our perception of the federal system is quite simply that it is a cooperative arrangement and not an adversary relationship. We each have our appropriate spheres of activity and relatively few, if any, of them are conducted in isolation. We are partners who represent overlapping constituencies and who serve the same ends—promoting the general welfare—with only differing degrees of detail.

It is the function of the federal government to devise national policies and implement these decisions through legislation and regulation. Ours is to contribute to the debate on what ought or ought not be national policy, to develop local policies consistent with national goals and to implement federal legislation in specific areas of human concern. We do not believe that the Congress or the federal agencies and departments can develop adequate and responsive national policies without significant formal and informal input from State and local governments any more than we can implement these policies if they are unreflective or unrepresentative of the realities and perceptions at the State and local level.

With the exception of the citizen himself, there is no more representative expression of public sentiment than that expressed by the locally elected public official, be he governor, Mayor or county executive, speaking for the citizenry. Our location, contracts and association with the people on a day to day basis imparts to us the wishes, needs and desires of the people undiluted and directly. We do not represent a private interest group, but the people themselves. Few State and local governmental functions rank higher than informing and cooperating with Congress. Thousands of federal programs requiring participation by the States and their political subdivisions demand that the voice of the people be heard through their State and local representatives during the formation, initiation and duration of programs. We cannot conceive that it is your intention to stifle or cut off unsolicited commentary from state and local officials, either individually or through our associations, on the potential impact in your own communities of measures under consideration or that you are uninterested in the actual impact of programs already in effect.

As I am sure you are aware, there was an attempt by the Justice Department last year to bring the employees of the League of Cities and Conference of Mayors under the existing federal lobbying statute. At that time, our organizations joined by the National Association of Counties challenged the contention of the Justice Department in court. We maintained then and continue to

maintain, that our organizations are political subdivisions of States and local governments. In support of our contention may I cite Attorney General McReynolds:

"The term 'political subdivision' is broad and comprehensive and denotes any division of the State made by the proper authorities, acting within their constitutional powers, for the purpose of carrying out a portion of those functions of the State which by long usage and the inherent necessity of government have always been regarded as public . . . It is not necessary that such legally constituted division should exercise all the functions of the state of this character. It is sufficient if it be authorized to exercise a portion of them." (30 Op. Atty. Gen. (1914) at 252.)

More simply put, a political subdivision of a State or of a local government is either:

(1) created directly by the State or local unit of government, or

(2) administered by State or local appointed or publicly elected officials.

Our organizations meet both these tests. They are created directly by the States or by subdivisions of the States and are administered by State, city or county appointed or publicly elected officials. What is more, these organizations are wholly owned by government officials and operated entirely under our direction and supervision. All acts or actions of our organizations, its executives and by assistants are under the direction, supervision and control of the public officials of the member cities, counties or states of these organizations. These acts and actions are in fact and in law the acts and actions of public officials acting in their official capacities. They are funded with public funds to accomplish public purposes and objectives arrived at public meetings.

To maintain that two or more local governmental entities who join together lose their governmental character is absurd and will not stand a test in court. The Port Authority of New York and New Jersey is legally considered a political subdivision of two states, an interpretation that has been affirmed in court. Voluntary and cooperative arrangements between individual States have not only been permitted, but have been encouraged by the Supreme Court. The Courts have also held that organizations of governments are political subdivisions of States. Even the Supreme Court, in accepting an *amicus* brief in *Baker* v. *Carr* acknowledged the National Institute of Municipal Law Officers as an instrumentality of local governments. And if an association of law officers is so considered, certainly an organization of Governors, County Executives or City Officials cannot be considered less.

Our organizations function on our behalf much the same way as federal agencies and departments serve the Executive Branch of the Federal Government. They serve as the means whereby State and local governments coordinate their national activities and collectively move to carry them out. If the Congress is not prepared to regulate the communication and solicitation activities of the Executive Branch of the same level of government—the offices of Congressional liaison of the various federal departments and the White House—then by logical extension they ought not intrude in the legitimate and official functions of the other two levels of government.

There is also a certain inconsistency with the Congress recognizing, acknowledging and utilizing our national organizations in some pieces of legislation, as for example in the Railway Association Act and the Act establishing the Advisory Commission on Intergovernmental Relations, and at the same time lumping our official instrumentalities in with vested interest groups. The Executive Departments have repeatedly recognized our associations by name as "local governments," in for example OMB Circular A–85.

In conclusion, we appreciate the desire of Congress to arrive at a more open and public process for the development of national policies and the enactment of specific legislation to implement these policies. But in our opinion, the business of public officials at the State and local level is already public information. There is little we do that is not subject to public scrutiny. All that would be accomplished by including us or our organizations in the proposed bills would be to hamper communication between and among the levels of government or to add an onerous and burdensome paperwork requirement to a job that already entails enough of that; and an additional cost to the taxpayers of another court challenge to the constitutionality of a Congressional enactment.

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PREPARED STATEMENT BY FRANCIS FRANCOIS, CHAIRMAN, COUNTY COUNCIL, PRINCE GEORGE'S COUNTY, MD., ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES

Mr. Chairman, I am Francis Francois, Chairman of the Prince George's County Council. I am here today representing the National Association of Counties (NACo), on whose Board of Directors I serve. NACo is the only national organization representing county governments. Our membership spans the spectrum of urban, suburban and rural counties which have joined together for the common purpose of strengthening county governments to meet the needs of all Americans.

I would like to record the National Association of Counties' concurrence with the statement of the National Governor's Conference that state, county and city officials support the public disclosure of lobbying activities. However, we do not believe that either county officials or their employees, whether hired by a single county or a group of counties should be considered in a different category from other public officials at the federal level who are exempted from the act by the fact of their public employment.

We are deeply concerned that the laws being considered by Congress to improve the present regulation of lobbying would not exempt our employees who have been hired by public bodies joining together in an association whose costs are paid for by public funds. We feel that in a federal system the states and their local subdivisions have a right and a duty to join together to ensure that their needs and views will be heard by the various branches of the federal government.

We feel it is important that those representing special interests make full disclosure of their activities because those of us in the public sector are not always fully informed about their activities that impact on public programs. The National Association of Counties, National League of Cities and United States Conference of Mayors felt the issue of our exemption as public officials to be of such importance that we sought and received a declaratory judgment (*Bradley v. Saxbe*[1] 338 F. Supp. 53 (D.D.C. 1974)) that our full time officers and employees are exempt from registration under the Federal Regulation of Lobbying Act so long as such person engages in lobbying undertaken solely on the authorization of a public official acting in his official capacity and such person receives his sole compensation and expenses for lobbying activity directly or indirectly from public funds contributed by cities, counties or municipalities. We would like Judge Gesell's judgment made a part of the record and are submitting it with our statement.

In order for the Congress to understand the work of the National Association of Counties and its employees, I would like to describe the operation, financing and policy-making processes of our organization. It is not possible or practical for each of the 3,101 counties in this country to have their own representative in Washington to help elected officials to understand what federal legislative or administrative actions means to county governments. Therefore, in 1935 counties joined together and pooled their resources to form a national organization to represent all counties in Washington before federal, administrative and Congressional bodies. Today more than 1400 counties are members of the association.

By virtue of a county's membership, all its elected and appointed officials become participants in an organization dedicated to improving county government; serving as the national spokesman for county government; acting as a liaison between the nation's counties and other levels of government; and achieving public understanding of the role of counties in the federal system. Meeting in annual and special meetings the membership acts on policy questions and chooses the Association's Board of Directors. The Association is funded by public funds appropriated by each member county on the basis of population. Policy is determined by a system of weighted voting also based on population. The county determines which of its elected or appointed officials shall cast its votes.

The representatives of the voting membership, the Board of Directors, including Officers, serves as the policy-making arm of the Association. In that role and sitting as the Resolutions Committee, the Board receives policy recommendations from the respective steering committees and, upon approval, submits such recommendations to a vote by the general membership.

Interim policy decisions arising between annual NACo meetings may be made by the Board of Directors, but such policy is subject to revision at the next

[1] See p. 510.

annual meeting. The Board of Directors also has the responsibility for the general supervision, management and control of the Association, including approval of the Association budget and selection of the Executive Director. The Officers (President, four Vice Presidents and the Fiscal Officer) and Directors (48 at large plus representatives from each affiliate and regional district) are elected for one year terms by the member counties at the annual NACo meeting.

NACo steering committees, under the direction of the President and membership, are responsible for assisting in the formulation and execution of policy as contained in the *American County Platform*. They carefully study federal, state and local issues in their respective subject areas and recommend policy for consideration by the membership. The membership is the final policy determining unit of the Association. Once policy is approved, the steering committees assume the major responsibility for supporting it at the local, state, and national levels.

In helping formulate policy, the steering committees conduct research into common county problems; explore issues through discussions and debates at NACo conferences and other committee meetings; counsel and consult with nationally recognized experts on government problems; foster similar inquiries at the state association level; draft proposed policy statements for action by the voting delegates; and support the committee policy recommendations on the floor of the convention.

In helping implement policy, steering committee members support the *American County Platform* in their own counties; promote the Platform in their state associations and before the state legislature; and support the Platform at the national level by providing information at the request of the Congress and federal Administrative agencies.

In his decision, Judge Gesell described the situation faced by local governments today:

"The involvement of cities, counties and municipalities in the day-to-day work of the Congress is of increasing and continuing importance. The Court must recognize that the voice of the cities, counties and municipalities in federal legislation will not adequately be heard unless through cooperative mechanisms such as plaintiff organizations they pool their limited finances for the purpose of bringing to the attention of Congress their proper official concerns on matters of public policy."

The impact of federal actions on counties cannot be underestimated. Approximately 22 percent of state and local budgets come from federal aid. The federal impact on counties is so great that some counties have full time employees in Washington to keep county officials informed about federal actions. Our understanding of the legislation before your committee is that those employed by a single county would not be required to register, but that employees hired by counties joining together in a national association would be subject to the provisions of the Act. Since all of these employees are paid for by publicly appropriated funds under the direction of public officials, we cannot see any difference between employees of a group of counties and employees of a single county who represent county interests before Congress and administrative agencies. This seems to discriminate against small and less affluent counties who must look to a NACo employee for assistance and representation.

I would like to emphasize the fact that all of the National Association of Counties' operations, deliberations and policies are open to the public, press and Congress. Our policies are printed in the *American County Platform*, which I described earlier. All actions and positions of the association are carefully described in our weekly newspaper COUNTY NEWS. Over 30,000 copies are distributed nationally, including 1,000 copies to Capitol Hill. The NACo budget is printed and distributed in the newspaper. We have no objection to disclosure of our operations and policies.

We think that the Members of Congress would agree on the need for more intergovernmental contract by public officials and their staffs at the federal, state, and local levels. A great deal of time of our NACo employees is spent in answering inquiries from Congressmen and federal agencies concerning county problems in administering and implementing federal laws.

In his decision concerning the existing Lobbying Act, Judge Gesell made a clear distinction between special interest groups and those groups representing public officials:

"Here there can be no doubt that all officers and employees of the plaintiff organizations are engaged in lobbying solely for what may properly be stated to be the "public weal" as conceived by those in Government they represent who are

themselves officials responsible solely to the public and acting in their official capacities. The narrow interpretation of the Act should be maintained to assure its constitutionality. Significantly, the legislative history reveals the definition of "organization" was intended to apply to "business, professional and philanthropic organizations," not to organizations of public officials and their agents."

We hope the Congress will recognize that difference also.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74–1327

THOMAS BRADLEY, ET AL., *Plaintiffs*,

v.

WILLIAM B. SAXBE, *Defendant*.

DECLARATORY JUDGMENT

On the application for declaratory judgment filed by the National League of Cities, the National Association of Counties, and the United States Conference of Mayors, on behalf of their full-time officers and their full-time employees, it is

DECLARED that each such officer and employee is exempt from registration under the Federal Regulation of Lobbying Act so long as such person engages in lobbying undertaken solely on the authorization of a public official acting in his official capacity and such person receives his sole compensation and expenses for lobbying activity directly or indirectly from public funds contributed by cities, counties or municipalities, as the case may be.

Enter judgment accordingly, SO ORDERED.

GERHARD A. GESELL,
United States District Judge.

DECEMBER 18, 1974.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74–1327

TOM BRADLEY, ET AL., *Plaintiffs*,

v.

WILLIAM B. SAXBE, *Defendant*.

MEMORANDUM AND ORDER

Plaintiff organizations representing their member cities, counties and mayors, respectively, seek a declaratory judgment to the effect that they, their named officers, and their full-time salaried employees are exempt from registration under the Federal Regulation of Lobbying Act, 2 U.S.C. §§ 261 *et seq.* They contend that the organizations are, in each case, mere extensions or agents of the public officials who created them, that all their activities are financed entirely from public funds, and that while their officers and employees are admittedly engaged in lobbying activity, they are not required to register under section 308 of the Act because such organizations, officers and employees are exempted from registration as "public official[s] acting in [their] official capacity," by section 267 of the Act, 2 U.S.C. § 267(a). Asserting that they are threatened with imminent criminal prosecution for failure to register, they filed this complaint to resolve the controversy. The matter comes before the Court on cross-motions for summary judgment and has been fully briefed and argued.[1]

The general rule that equity will not act in anticipation of criminal prosecutions is subject to exceptions *Zemel* v. *Rusk*, 381 U.S. 1, 19 (1965); *Evers* v. *Dwyer*, 358 U.S. 202 (1958). While there is no precise test in such situations, one

[1] The Court denied plaintiffs' application for a three-judge court and neither the plaintiffs nor the Government sought appellate review of that ruling. Plaintiffs' application for preliminary injunction was abandoned in order to bring the merits forward for prompt resolution.

important factor is whether the penalties involved are so great that unless declaratory relief is entertained, the plaintiffs will, as a practical matter, be compelled to forego their legal position and be obligated to submit. *See Terrace* v. *Thompson*, 263 U.S. 197, 212 (1923). *See also, Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925). This factor is clearly present here since under 2 U.S.C. § 296(b) any person convicted of violating the Lobbying Act is automatically prohibited for three years from "attempting, directly or indirectly, to influence the passage or defeat of any proposed legislation" in Congress. To the employees of plaintiff organizations, the threat that upon conviction they would be barred for three years from continuing their employment is obviously far more imposing than the possibility of being fined in a test case. Rather than run that risk, if declaratory relief is denied, they may well be forced to submit to a statute they sincerely claim cannot legally be applied to them. *See National Assn. of Manufacturers* v. *McGrath*, 103 F. Supp. 510, 512 (D.D.C.), *vacated as moot*, 344 U.S. 808 (1952).

This *in terrorem* effect is made all the more compelling by the disturbing First Amendment overtones, discussed more fully below, of threatened criminal prosecutions in these circumstances. *See N.A.A.C.P.* v. *Button*, 371 U.S. 415, 433 (1963); *Dombrowski* v. *Pfister*, 380 U.S. 479, 485–489 (1965); *Epperson I. Arkansas*, 393 U.S. 97 (1968); *National Student Assn.* v. *Hershey*, 134 U.S. App. D.C. 56, 412 F. 2d 1103 (1969); *Tatum* v. *Laird*, 144 U.S. App. D.C. 72, 444 F. 2d 947, *rev'd*, 408 U.S. 1 (1972).

It should also be noted that the principles of federalism and comity which have prompted federal courts to abstain from intervening in pending state criminal prosecutions, *Younger* v. *Harris*, 401 U.S. 37 (1971); *Samuels* v. *Mackell*, 401 U.S. 66 (1971); *Steffel* v. *Thompson*, 415 U.S. 452 (1974), work in quite the opposite direction here where agents of state officials threatened with federal prosecution seek to invoke the aid of a federal court of equity to clarify their obligations under federal law, *cf. Steffel* v. *Thompson*, *supra*, 415 U.S. at 462, particularly since the issues presented are purely legal involving statutory interpretation, uncluttered by factual disputes. Compare *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 149 (1967), with *United Public Workers* v. *Mitchell*, 330 U.S. 75, 90 (1947). Thus a declaratory judgment is not barred because the issue may also be tested by criminal prosecution.

It is necessary next to consider whether there is a sufficient real and tangible threat of criminal prosecution to present a "case or controversy." The Court has concluded this case presents "a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941). The Attorney General has apparently pointedly informed some interested public officials that prosecutions will be brought. *Cf. Steffel* v. *Thompson*, *supra*, 415 U.S. at 455–6, 459. Defendant Saxbe's counsel has, moreover, not undertaken to deny this alleged threat, but rather has reiterated as the official position of the Department of Justice in this litigation that plaintiff organizations are in fact required to register.[2] *Cf. Abbot Laboratories* v. *Gardner*, *supra*, 387 U.S. at 152 (1967). This is not theoretical. Agents of the FBI, acting under the direction of the Criminal Division of the Department of Justice, have begun active field investigations to gather evidence against certain employees of at least two of the three plaintiff organizations. While it may be true, as the Government maintains, that the Department of Justice has not yet selected particular employees of plaintiff organizations to indict, the fear of prosecution here is "realistic" rather than "chimerical" in light of these undisputed facts. *Poe* v. *Ullman*, 367 U.S. 497, 508 (1961).

With these considerations in mind, the equities of the situation call for prompt resolution of the controversy in the public interest. The involvement of cities, counties and municipalities in the day-to-day work of the Congress is of increasing and continuing importance. The Court must recognize that the voice of the cities, counties and municipalities in federal legislation will not adequately be heard unless through cooperative mechanisms such as plain-

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[2] "On the other hand, it . . . remains the view of this Department that salaried employees of associations which represent the federal legislative interests of governmental entities . . . are not exempted from the requirements of 2 U.S.C. 267 simply because the funds with which such activities are funded originate in the first instance, from the treasury of some governmental entity." Defendant's Statement of Material Facts as to Which There is No Genuine Dispute, ¶ 3.

tiff organizations they pool their limited finances for the purpose of bringing to the attention of Congress their proper official concerns on matters of public policy. *Cf. Gravel* v. *United States*, 408 U.S. 606, 616–7 (1972). Registration involves numerous administrative and practical difficulties in this instance. On the other hand, criminal prosecution would create uncertainties and interfere with the on-going work of the plaintiff organizations by creating doubts as to the propriety of their lobbying efforts.

The issues here are purely federal and of such major national consequence that the Court has concluded a declaratory judgment is appropriate in the public interest. The Court therefore reaches the merits.

The question of statutory interpretation presented is easily delineated but not without its difficulties. On the one hand, a clear exemption exists for public officials acting in their official capacity. On the other hand, those who work for "organizations" must register their individual lobbying employees. Here the plaintiff organizations are, although corporate in form, organizations financed with public money concerned solely with lobbying in the public interest for officials who are themselves exempt and all of the lobbying work is for governmental purposes and is financed from public funds. Virtually nothing in the legislative history casts much light on this latent ambiguity in the statute.

Plaintiffs claim that the statutory exemption runs to fulltime agents of public officials paid solely from public funds and lobbying solely on behalf of governmental, *i.e.*, official, interests. There have been very few prosecutions under the statute; none that raise the issue presented in this litigation. Congress appears to have impliedly acquiesced in the interpretation urged by plaintiffs. These organizations and their employees have openly functioned in a lobbying capacity in both houses of Congress for many years, and their useful activities are well known to Congress, but no prosecution has ever been brought. *See* 2A Sands, *Sutherland on Statutory Construction* (4th ed. 1973) §§ 49.03, 4907 and 49.10.

Of even greater significance is the narrow ground by which the constitutionality of the Act itself was sustained by a divided Court in *United States* v. *Harriss*, 347 U.S. 612 (1954). A close reading of the Supreme Court decision indicates that the Court sustained the Act by finding as a proper purpose underlying the statute the effort of Congress to force disclosure by private "special interest groups seeking favored treatment while masquerading as proponents of the public weal." *Id.* at 625. This narrow purpose, read into the statute, enabled the Court to overcome the First Amendment challenge. This purpose would not be effectuated by registration in this particular instance. Here there can be no doubt that all officers and employees of the plaintiff organizations are engaged in lobbying solely for what may properly be stated to be the "public weal" as conceived by those in Government they represent who are themselves officials responsible solely to the public and acting in their official capacities. The narrow interpretation of the Act should be maintained to assure its constitutionality. Significantly, the legislative history reveals the definition of "organization" was intended to apply to "business, professional and philanthropic organizations," not to organizations of public officials and their agents. S. Rep. No. 1400, 79th Cong., 2d Sess., 27. *United States* v. *Harriss*, *supra*, 347 U.S. at 620–1, n. 10. The activities of the public officials here under review are not such as fall within the realm of prohibition which the Supreme Court used to justify the constitutionality of the Act.

The Act was not intended to apply to full-time employees of plaintiff organizations engaged exclusively in lobbying for cities, counties and municipalities. A declaratory judgment in favor of plaintiffs in the form attached will be and hereby is granted and defendant's motion to dismiss or for summary judgment is denied. Plaintiffs' prayer for injunctive relief is denied. *See Washington Research Project, Inc.* v. *H.E.W.*, No. 74–1027 (D.C. Cir. Sept. 12, 1974), (slip opinion) pp. 25–6. The foregoing shall constitute the Court's findings of fact and conclusions of law.

So Ordered.

Gerhard A. Gesell,
United States District Judge.

December 18, 1974.

Chairman Ribicoff. We now have Allen Smith, Joseph Browder, Ms. Jacqueline M. Warren, and Gary Frink.

I would appreciate your telling me two things. Do you believe there should be a lobbying law, or do you believe there should not be?

TESTIMONY OF ALLEN SMITH, SIERRA CLUB, CONTROLLER; JOSEPH BROWDER, ENVIRONMENT POLICY CENTER; MS. JACQUELINE M. WARREN, ENVIRONMENTAL DEFENSE FUND; GARY FRINK, EXECUTIVE DIRECTOR, NATIONAL COMMITTEE FOR EFFECTIVE NO-FAULT

Mr. SMITH. Mr. Chairman, Senator Metcalf, I am Allen Smith, controller of the Sierra Club. I would like my written testimony included in the record as submitted. We do believe that there ought to be lobbying legislation. But we feel that the problems with the bills as proposed right now are that they do not specifically address the issue of lobbying abuses and how one would regulate lobbying abuses.

Rather, they cast a broad net trying to capture all lobbying transactions. Then some Solomon, in his wisdom at GAO, is perhaps to determine what is or is not a lobbying abuse.

Chairman RIBICOFF. Let me ask you, what is there about this bill that concerns your various groups? That answer can come from any of you. What is there that you believe is onerous, is unfair, that will frustrate your opportunity to make your positions known?

Mr. SMITH. The Sierra Club is a membership organization of 153,000 members. Within that membership are 286 chapters, groups, and sections which are affiliated subdivisions of that membership. These are independently managed by their own volunteer citizen managements. They operate within the broad policy guidelines of the National Sierra Club as established by its elected board of directors.

For one focal point to try and capture all of the lobbying transactions that go on within our active membership, citizens who, if they did not choose to organize, would otherwise be exempted in exercising their rights of access to Congress and the Executive, would be extremely burdensome. These citizens would have to submit lobbying reports if they identified themselves through the Sierra Club, as we understand this legislation, all the way through to the point where I would have the onerous task of trying to capture somewhere in the neighborhood of 50,000 lobbying transactions a year.

Chairman RIBICOFF. What bothers you is that you would have the responsibility of reporting on the activities of each one of your chapters. Does that bother you?

Mr. SMITH. We do not presently have the mechanisms to do that. Neither do they. At the very least, I would estimate that the full impact of a lobbying legislation which required that we report all of the activities, both in interfacing the Congress and the Executive, would cost the Sierra Club as much as $250,000 a year, to report $500,000 of expense.

Chairman RIBICOFF. What is your entire budget?

Mr. SMITH. Five million. In other words, this would represent a 5 percent cut right off the top of our budget.

Chairman RIBICOFF. Do you think that anything you do should be subject to reporting?

Mr. SMITH. I find that a very difficult question to answer simply because I have not seen the question of what is a lobbying abuse addressed in the legislation.

Chairman RIBICOFF. Let us say the Chamber of Commerce, the Manufacturers Association, sends out a bulletin asking all their mem-

bers to write their Congressman or Senator on issue X. Let us say the Sierra Club sends out a bulletin to all its members to write Congressmen and Senators on issue Y.

Is there any reason why the Manufacturers Association, AFL–CIO, and others should have to report that, and the Sierra Club should not?

Mr. SMITH. No, sir.

Chairman RIBICOFF. That does not bother you?

Mr. SMITH. That does not bother me. I believe there ought to be fair and equal treatment of all organizations under any lobbying law, whether it is a citizen's group or whether it is State and county group, Federal officials or the Congressmen and Senators themselves.

Chairman RIBICOFF. What bothers you is that if you have a Sierra Club of 20 people in a small town, and if a secretary who is nonpaid gets on the telephone and says, "Will you write to Senator Metcalf or Senator Ribicoff," they will have to keep records and report that. You feel this would frustrate what you are trying to achieve?

Mr. SMITH. Yes, sir; we do. We feel that has basic first amendment problems in having a chilling effect on what is a very natural process of Government, the lobbying process.

Chairman RIBICOFF. But if you write to all your members nationally and your various chapters that there is a strip mining bill coming up, and you go along with Senator Metcalf, and write all the Congressmen and Senators to support Senator Metcalf's bill, then you have no objection that such a letterwriting campaign be reported?

Mr. SMITH. Absolutely not. We have no objection to that. The problem with us is an administrative one of determining where do you draw the line, of what is cause and what is effect in a decision.

As a decisionmaker myself, I find it very difficult to see how collecting all the raw data that presumably influenced a decision can in fact lead a third party to determine what was in the decisionmaker's mind when he made that decision.

Chairman RIBICOFF. May I ask the staff, is the problem that is presented this morning by this group, dissimilar from the problem that was presented yesterday by the second group?

Mr. WEGMAN. The same type of problem.

Chairman RIBICOFF. We had another public interest group before us yesterday. At the end of the testimony it was my suggestion that they meet with the staff and try to work out their problems. I'm very sympathetic in the position you are taking. I am anxious not to frustrate the voice of the people all over the country. Really, that is not what we are after. If there are elements in this bill that are too onerous and do not make sense, we want to know it.

I was wondering, if you had time at the conclusion of this hearing, whether you would sit down with the members of the staff right in this room and discuss the problems. Let us forget the wording of the legislation. That can be changed. We would like to know what the problems are as they affect your work. That is what I am interested in.

Senator METCALF. Mr. Chairman, may I put in a word for my own bill?

Chairman RIBICOFF. They like your bill, many of them. That is all right.

Senator METCALF. I put in a bill that expresses some of my ideas and concerns for, the first amendment and intolerable restrictions on

small organizations, and so forth. But believe me, I am not wedded to the language of that bill, either, except that I would like to have consideration of the legislation that I have introduced, along with the legislation that the Chairman and others have introduced. Would you consider all this together?

Chairman RIBICOFF. May I say that anything Senator Metcalf introduces will be treated with the highest respect because I respect him and his position. To the extent that Senator Metcalf's proposals address some of the problems you state, I will accept them gladly.

And Senator Metcalf's assistant will be in on the conference that you will have.

I think you were in yesterday, too.

Mr. TURNER. Yes.

Chairman RIBICOFF. I think the most helpful suggestion that I could make is for you to sit down with the staff. I believe the staff knows my philosophy and my thinking. I think much more could be achieved if you would just stay here and go over the various facets of the bill that bother you.

If you do not even want to go over the bill, tell us the problems, where you think this will be harmful, how the provisions will frustrate your operations. You see, we are not after public interest groups such as yours. But we really do have to have a bill in which certain practices are treated uniformly.

Mr. FRINK. Might I say at this time I am not affiliated with the Sierra Club, and I am here in support of your bill. My criticism of it is that it does not go far enough. I lobby for the National Committee for Effective No-Fault. We think we work in the public interest, and for the Organization to Manage Alaska's Resources. Again, we think we work in the public interest.

But my problem with your bill is that it does not include the government. My view is that if you are going to have lobby reform, you must have full disclosure in order that Members of Congress can obtain information on where pressure is coming from, period. If you exclude the Sierra Club, or if you exclude the city of Rockville, or if you exclude the Department of Transportation or any other Federal department or agency, you are not going to have that full disclosure and your reform is going to be meaningless.

Mr. BROWDER. Mr. Chairman, could those of us who formed a panel to talk to you complete our presentation before you go on?

Chairman RIBICOFF. You are not asking he be excluded, are you?

Mr. SMITH. No, sir, but we would like to finish our panel presentation. I have just one other point I would like to make before I pass this to Mr. Browder.

There is a problem of definition. Definitional complexity, as has been pointed out in this hearing already, is very vast in this bill as it affects us. For example, if our volunteers were trying to influence timber cutting practice on a given national forest, it would not be lobbying under the Tax Code, but would be lobbying under S. 2477. If these same volunteers turned around to contact their own Senators and Congressmen on the bill dealing with forest practices, they would be lobbying under the Tax Code but not lobbying under the exclusions of S. 2477.

In other words, there are just the opposite definitions of what has

to be reported as lobbying, vis-a-vis the Tax Code and the lobbying legislation as it is presently being drafted.

Chairman RIBICOFF. That problem has been raised. I think there has to be some reconciliation. That has caused great confusion across the Nation with the rulings of the IRS.

Mr. SMITH. I would now like to pass this to Mr. Browder.

Mr. BROWDER. I am Joe Browder from the Environment Policy Center. Ernie Dickerman from the Wilderness Society asked me to ask you if you would please include the Wilderness Society's statement in the record.

Chairman RIBICOFF. Without objection, all of the prepared statements will be entered at the conclusion of the panel's testimony.

Mr. BROWDER. He wanted me to tell you the Society is strongly opposed to the legislation.

So you will know where it is coming from, the organization that I represent, the Environmental Policy Center employs 10 of the 22 lobbyists that work in Washington, that are registered with the Secretary of the Senate to work on environmental issues. We have the only full-time professional nonindustry lobbyists who work on coal, offshore oil, energy facilities siting, land-use planning and water resources. We try to comply with the existing law now, and we do not comply with the Supreme Court decision, we comply with the 1946 act. We report all of the money that is given to us, and I cannot remember whether it is $100 or $500, whether the provision of the law is, every expenditure of $10 or more we submit, every piece of propaganda that we produce.

We have lived with this legislation since we organized to try to be a public interest lobby for environmental groups. So we do not see anything onerous or burdensome about reporting ourselves as being in the lobbying business, telling the Congress who pays us to do it.

But I am afraid that this supposed reform legislation, instead of addressing the abuses, is just going to be an extension of a kind of a reporting of the nonabusive lobbying practices and will not really get to the problems that you want but will really hurt us. I think it can hurt you all in a critical sense in ways that have not been thought of.

I think that legislation like the bill that the committee is considering now could give the executive branch much more of a lock on information in relation to the legislative branch. I think that you would really see an impediment to the flow of information about policy development and more of a concentration of information locked up in the executive branch because of the kinds of reporting and accounting requirements that are in these various bills.

Chairman RIBICOFF. Do you want to give us some examples of that?

Mr. BROWDER. Sure. I can give you a generalized example. Someone in the Department of Fish and Wildlife who sees an abuse during the development of policy in his organization informs someone on the outside. Someone on the outside informs the Congress. If everyone who contacts every employee of the Fish and Wildlife Service is required to report that to Congress, then everyone in the Fish and Wildlife Service will know that he or she is going to be counting fish eggs on an island somewhere if they talk to somebody who works for the Sierra Club and reveal what they found out, somebody in the Assistant Secretary's Office is doing that they do not want the Interior Committee to know about.

To not be general, but to be very specific, when we were able to get information from someone in the Treasury Department a couple of years ago showing that the administration's Project Independence plans were just a big PR job, they had no intention of reducing oil imports in this country, had every intention, still do, of expanding the level of imports, and the Project Independence rhetoric had nothing to do with actual energy planning inside the executive branch. There is no way under this kind of legislation we could have gotten that information, or people in congressional committees could have gotten it from us, without our breaking the law, without our becoming secret sneakers-around in a lawbreaking sense and risking fines and imprisonment.

Something that is very important: If you are going to be marking up a bill, I would urge you first, Senator, to not try to mark this up in a hurry because I think there are some very serious problems in it. If you try to mark it up before Thanksgiving, before Thanksgiving recess, say, I just do not see how it could be thought out well enough to take care of these problems.

If you are going to go into markup, I would hope that you would use Senator Metcalf's bill as a markup vehicle, because while we have some problems with it, it is so far superior to the other legislation that I think starting as a markup vehicle, at least our interests would be in better shape.

There is something that I would just like you to know. The concepts, as I see them, anyway, in this legislation do not, in spite of what you might have heard from Common Cause, reflect a consensus of what citizens' groups that are trying to take some role in developing legislation think the process of lobbying is or ought to be. From our point of view, at least, the Common Cause concepts that have gotten into this legislation and into the House side reflect the point of view of people who do not really participate in the development of legislation, but are more observers, critical observers.

But they really do not understand what is going on. They do not understand the democratic flow of information in an unstructured, unautocratic way.

We have in other areas of disagreement with Common Cause been told that environmentalists are special interests that have no business trying to inject themselves into anything as important as congressional reform. I just want to tell you that I think the interests we represent, while you might not always agree with them, represent as much of a genuine effort on the part of diverse elements in our society to really inform themselves about government and take part in it as anything else.

You all should make a very clear distinction between the kind of write-your-congressman citizen involvement which can only have limited impact on the development of legislation, and a higher degree of sophistication on the part of citizens who decide that, in order to really participate in the development of policy, they have to organize, inform themselves, hire people who are going to gather information for them and speak for them.

I do not think just because citizens go through that process that they should be somehow categorized as engaging in something bad. I do not think that because industry goes through that process that

industry should be categorized as doing something bad. People who really participate in the development of a bill know who the other players are and they know what is going on.

In the strip mine bill we know who is lobbying for the Peter Kiewett and Bethelem and Burlington Northern people. We know who they will see, who in the Congress and executive branch will see them, and who won't see us. Anybody who is really active from a public interest point of view knows this.

The people who do not know it are the organizations like Common Cause that sort of sit on the outside as observers and think that because they are not involved enough in the legislation to really know what is going on, somehow they have to make everybody else go through a process that I think would just put us and the groups we work for out of business.

Chairman RIBICOFF. Ms. Warren.

Ms. WARREN. Senator Ribicoff, the Environmental Defense Fund has a different kind of problem from either of the two other organizations that have just spoken. We are a 501(c)(3) environmental organization whose primary activity is litigation and participation before the Federal agencies and courts. We do very little legislative lobbying.

The problem that we have with this bill, first of all, is the scope of the definition of lobbying which takes into account executive branch contacts. Even though S. 2477 only applies to executive branch solicitations, other bills before the committee do cover any contact with members of the executive branch. We engage in a substantial amount of activity before the Federal agencies. The kind of executive branch solicitation we might do would be to read the Federal Register on behalf of other smaller groups who do not do it, and inform them of pending regulations or proposed rules which they would certainly want to comment on on the basis of the activities that they ordinarily undertake. The simple fact of Xeroxing that Federal Register notice and sending it out to 10 or 12 groups and telling them to comment on it would bring us under this bill, requiring us to register as lobbyists. We operate presently at a deficit level. The requirements involved in registering as a lobbyist would be very burdensome on us.

The second point is, because we are a tax exempt organization, unless a very clear distinction is made between legislative lobbying and executive branch lobbying activities, we feel our tax status would certainly be jeopardized. IRS might require the same kind of reports to be sent to them so that they could make a determination of whose activities are substantial. Certainly, they are going to look at what is being reported to GAO.

It seems to me the focus of this bill is to correct abuses in lobbying, meaning substantial lobbying efforts, by having a threshold that triggers the registration requirements. It should not be as low as 12 oral communications.

One perfect example I can give you is that we are involved in a very broad range of environmental issues. We get many phone calls from members of congressional staffs saying, "We want to put in an amendment on attorneys' fees," for example. "What do you think about this?"

That could easily bring us within the 12 communications rule. Any

12 phone calls responding to such inquiries over a 3-month period would bring us under the coverage of this bill. Even though we support the need for lobbying reform, I would certainly want to see the threshold raised so that you really are only going after substantial lobbying efforts. We do not ever solicit our members to write to Congress, because of our tax exempt status. We have on occasion informed our membership about various Federal agency actions about which they would be interested.

The reason they joined EDF in the first place is because they want to be kept abreast of what is going on. They do not read the Federal Register along with the Reader's Digest.

I don't know what the solution is. I think we would really want to be exempted from the reporting requirements for our activities before the executive branch. In the first place, the Adminstrative Procedure Act and the various environmental statutes require the agencies to publish their proposed actions in the Federal Register and to solicit comments so that, when we do participate in those decisions, our activities are generally on the public record already. Having to report those activities with samples of written statements or oral transcripts and listings the names of our contributors——

Chairman RIBICOFF. Let me ask you, Ms. Warren, would you in your experience solicit 500 people about the same subject to lobby the executive branch?

Ms. WARREN. Would we solicit 500 people in terms of the executive branch?

Chairman RIBICOFF. On the same subject matter.

Ms. WARREN. If we send 12 or 15 organizations a copy of a Federal Register notice telling them that this is something they might want to comment on, if you count their membership and if you consider them affiliated organizations—"affiliate" is not defined in the bill—I think we would come under that provision. It would certainly be easily 500 people. It would be very easy for us to come under that with even one notice of that kind.

I think what would be most likely to happen would be that we would just stop doing it, rather than have to report everything and go to the expense of it, as I said, to potentially bring our tax exemption in jeopardy, even though it is not in any sense of the word a legislative lobbying effort and certainly could not be considered substantial.

Chairman RIBICOFF. Senator Metcalf, do you have any questions?

Senator METCALF. Mr. Chairman, I am familiar with the activities of the Sierra Club and the Environmental Policy Center and the Environmental Defense Fund in several areas.

I used to be a member of a conservation commission, a quasi-administrative agency, where they would send suggestions in for the use of duck stamp money for purchase of waterfowl refuges.

On the strip mining bill, too, I have had these groups work with me. But I would like to have your next witness identify the National Committee for Effective No-Fault, because I also remember having had some communication with that group.

Chairman RIBICOFF. Before we go to Mr. Frink, are there any more comments? This group and Mr. Frink are different categories. Are we finished with these three witnesses?

Mr. SMITH. Mr. Chairman, I would just like to underscore what the cost of this would be to us. When I spoke about a $250,000 cost on a $5 million budget, I failed to point out that all the programs of the Sierra Club are within that $5 million budget. But one of that $5 million there is only about $500,000, perhaps, that relates directly to influencing the public policy process.

Chairman RIBICOFF. I understand from Mr. Browder that you are already filing reports.

Mr. SMITH. That is correct.

Chairman RIBICOFF. Does this place a much more onerous burden on you than what you are doing now?

Mr. BROWDER. Yes, sir.

Mr. SMITH. Absolutely.

Chairman RIBICOFF. When you talk about $250,000 are you talking about 250,000 additional dollars?

Mr. SMITH. Yes, an incremental cost. I would have to establish reporting systems, with all our groups and the chapters to make sure we got all these transactions properly recorded.

On that subject, a 15-day turnaround time from the end of the quarter is an unrealistic time. Most people do not get their books closed in that amount of time. It is much too short a time frame and much too onerous.

Mr. BROWDER. Sir, there were more than 500 amendments offered to the strip mining legislation in the couple of Congresses that have considered it. If you just took that one legislation, only our organization and the people we work with, and not count the Sierra Club and the other organizations, our contacts with other people about each of those amendments and responses to them add up to so many thousands of decisions and communications on that one bill alone that I do not think the people who drafted this had any idea of what the impact would be. But it would be really substantial.

Chairman RIBICOFF. I have a pretty good idea of what is bothering you. Again, if you would remain when we finish these hearings and talk to the staff around the table quietly, let us see if we can reconcile the positions.

Ms. WARREN. Mr. Chairman, I would like to make just a few more comments. In general, I think the language of S. 2477 is much too complicated.

First of all, this is an infringement on a constitutional right to petition both the Congress and executive branch for redress for grievances. If you are going to subject people to penalties, I think it has to be comprehensive to laymen. Many groups do not employ attorneys unless they engage in litigation and would not be able to make heads nor tails of what is required of them. The likely result is that you are not going to hear from them at all.

Second, there are two provisions in this bill which have great potential for harassment of organizations such as ours. One is the provision, that which requires the Comptroller General to investigate the lobbying activities of any organization or individual at the request of any Member of the House or Senate. One example of such harassment which comes to mind is this. EDF has testified and has engaged very actively in litigation efforts to get certain cancer-

causing pesticides banned. As a result of that we have become rather unpopular with certain Congressmen and other private individuals who have gone to the IRS and asked them to investigate our activities.

I think the potential for that sort of thing which exists in this bill S. 2477, provision 10–9, which is the one I just mentioned, and also section 12(A)(2), which enables the Comptroller General to investigate an organization or individual's activities just based on information provided to him by any person, I think that kind of harassment potential really could further impede our activities.

In general, groups like EDF arose in response to a need to represent before the Federal agencies and, to some extent before the Congress, interests which traditionally have been either unrepresented at all, or underrepresented.

We have tried to provide some counterbalance to various significant and influential lobbying efforts by the powerful special interests. I think if we are to be subject to these bills in the way they are presently drafted, that the end result is going to be less participation. You will know who is doing what, but we will not be among the ones who are doing it.

Chairman RIBICOFF. Thank you very much. I understand your position. You do not have to stay for Mr. Frink, unless you want to.

Ms. WARREN. I would like to ask one question. You have asked if we would be willing to participate in trying to work out some of these problems. Under S. 2477, testimony like this before a committee would be excluded. But what about further communications following from the testimony, such as the meeting you just suggested? I think even that would count as a lobbying communication. I am not certain we would be able to do that just because of our 501(c)(3) status.

Chairman RIBICOFF. The staff informs me that any communication that is part of the public record is exempt.

Ms. WARREN. Would the subsequent meeting be part of the public record?

Chairman RIBICOFF. Well, the bill has not been passed, so you are not going to be penalized for talking to the staff.

Mr. Frink.

Mr. FRINK. Senator, good morning. Senator Metcalf, you were in the process of asking me what our group is. It is a coalition of organizations interested in the passage of bills like S. 1354, which has been reported by the Commerce Committee and is awaiting floor action in the Senate.

Senator METCALF. I cannot keep track of all the bills by number. Tell me what that is.

Mr. FRINK. I understand. It is a bill to enact Federal minimum standards for no-fault auto insurance systems in the States.

Senator METCALF. All right, I am familiar with it.

Mr. FRINK. In the coalition are the AFL–CIO, United Auto Workers, Brotherhood of Teamsters, the United Mine Workers, the entire labor movement, plus the American Insurance Association, and the Consumer Federation of America.

Senator METCALF. Today you are not speaking for the AFL–CIO?

Mr. FRINK. No. I am not speaking for the coalition. I am speaking for Gary Frink, who is a registered lobbyist and who has had some experience.

Senator METCALF. Go ahead.

Mr. FRINK. Senator, I would have to be very sympathetic to the problems that these people with the environmental groups would have with the bill. I think there has been a lot of talk here this morning about lobbying abuses. I am not sure what they are, but I believe that a lot of organizations and people who do now in fact lobby under the ineffective law we now have do not register. If they do not register, then there can be no disclosure for Congress.

As I understand it and interpret it, myself, this is what this reform is about, to give Congress the knowledge of where the pressure is coming from, who are the groups and persons who are attempting to influence them. So I am very sympathetic in the sense that there would be finite reporting and, if it should be onerous, report keeping. I see where they would have a problem. It is one that you have got to deal with.

Mr. Chairman, Mr. Metcalf, I believe very strongly that if you do not bring in all of those who lobby, you are not going to have your reform. I really emphatically believe that you can bring in the Federal Government and other government agencies. I would exclude only constituent contacts with their elected officials and written contacts. Once you leave that sphere, if somebody makes a telephonic or personal contact with a Member of Congress, I think he ought to be registered in order that Congress knows that that is going on.

In the State of New Jersey, as I understand it, you have to wear a badge to even enter the statehouse if you are a lobbyist and have a point of view. In the State of Michigan you have to acquire a number. They ask you, "What is your number? Why are you here?"

For one moment, going to the matter of enforcement, I agree very much with the provisions you have in your bill for GAO. But the inherent essential enforcement of any lobby reform act is going to have to come from the Members of Congress and their staffs. Every time somebody on a staff is contacted from the outside, they should ask, "Are you a registered lobbyist?" If the answer is "No," or if there is equivocation, that communication should end there. If the staff and the members did that every time they were asked to do something or attempted to be persuaded by an outsider, if they asked that question, we could get meaningful lobby reform here in the Congress, in my view.

Maybe what we ought to do, based on your success with the Sunshine Acts, Mr. Chairman, maybe we ought to call this the Lobbyist Sunshine Act and tag it right along with the reform that you are in the process of bringing along now, because that is really what it is. I think that ends my statement.

Chairman RIBICOFF. Your thought is that Congress ought to know who is doing what and why?

Mr. FRINK. Exactly.

Chairman RIBICOFF. Without bogging everybody down with a lot of paperwork.

Mr. FRINK. It would satisfy me if the Environmental Defense Fund just filed a simple statement, "We are in favor of legislation X, Y, Z. Our resources are A, B, C."

Chairman RIBICOFF. How do you react to that suggestion? Would that satisfy you?

Mr. BROWDER. That is done now, sir. If anybody is involved in legislation at all and complies with the present regulations.

Chairman RIBICOFF. But how many do?

Mr. BROWDER. We do; the Sierra Club does.

Mr. FRINK. I agree with them that they are really after those who do not comply at all. I think this is the essential reform.

Chairman RIBICOFF. Senator Metcalf.

Senator METCALF. Mr. Chairman, yesterday and the day before I was holding hearings on a bill that would provide for Federal assistance for coal mining research and development and establishing fellowships around the country in universities. Now the administration, for 2 days, under the ERDA program, brought in 200 academicians from the various universities of America. Some of them who were attending that meeting dropped in to see me. Now, would you require them to register?

Mr. FRINK. Absolutely, unless they were Montanans and registered voters in Montana.

Senator METCALF. One of them was from Wyoming. There is something about the northern Great Plains coalbed that forgot to stop at the boundaries of Montana, and splashed over into Wyoming.

Mr. FRINK. I understand that, sir.

Senator METCALF. He came up to me to talk about problems of research and development and management, just because he was in town. Would I tell my staff to keep him out of my office until he registered and got a number or wore a badge?

Mr. FRINK. Senator——

Senator METCALF. Or a lavaliere around his neck, or something?

Mr. FRINK. I do not care if you have an ex post facto provision that so many days after that contact he has to file a simple form. But in my view Congress is not going to know. This did not happen that those folks stopped by to see you, Senator Metcalf. They were in town. I do not know why they were in town, but they were not oblivious to the fact that you were holding hearings on issues very important to them.

Senator METCALF. They were oblivious to that fact because they were invited to attend a conference by ERDA. I asked Senator Hansen, who was helping me hold the hearing, "Why don't you get some of these witnesses in to see me?" I issued the invitation.

Now, when Dr. Meyer, who is the Wyoming man and an outstanding expert, came in, am I supposed to say to him, "Well, Dr. Meyer, I don't know anything about you and you have not been numbered and you are not registered yet. So you have to stick around 2 or 3 days?"

Mr. FRINK. In my mind, Senator, there is an immediate distinction there in your case. You invited them.

Senator METCALF. Then do I have to make a log?

Mr. FRINK. No; I don't think so. In my view I see lobbying as persuading Congress. If you are inviting a person to come up, you give an invitation; in my point of view that would not be lobbying. So you would not have to register, and he would not have to register.

Senator METCALF. Another example came up yesterday. Mr. Chairman, you will remember the very distinguished Congressman from Pennsylvania, Mr. Gus Kelly. His son is a professor of mining engineering in West Virginia. He dropped in to see me because he said that he remembered when I served in the legislature with Gus Kelly, his father. We talked about coal mining legislation.

Now, is that lobbying?

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Mr. FRINK. Did he attempt to persuade you?

Senator METCALF. Certainly he did. He attempted to persuade me on Mr. Heckler's proposal that we should completely eliminate all strip mining.

Mr. FRINK. Senator, in my view, that is lobbying even though he is your old colleague's son and can be considered a friend of the family. In my view that would be lobbying.

Chairman RIBICOFF. Another thing, I was walking through the corridors yesterday and ran into Wilbur Cohen. He was with a half dozen other deans of universities. I said, "Wilbur, what are you doing in town?" He said, "Well, I am here to see Senator Pell on an education bill." And he introduced me to his other colleagues.

I said, "What is the bill all about?" So they told me what it was all about. Does this constitute lobbying?

Mr. FRINK. Senator, you and I both have a close personal relationship with Wilbur Cohen, and we both know that he is always lobbying.

But to go to the issue you raised, yes, sir. If he is talking to you and trying to persuade you——

Chairman RIBICOFF. In other words, when I see him coming from across the street——

Mr. FRINK. Wilbur Cohen ought to be registered as a lobbyist across the Nation. [Laughter.]

But I do not mean to jest now. You cannot limit to the AFL–CIO and chamber of commerce. If you really are going to pave the way for Congress to know where the pressure is coming from, and I do not think it is an onerous task to ask a person to file a simple form before he attempts in person to persuade a Member of Congress.

Chairman RIBICOFF. I agree. I think this is a dilemma. Congress cannot put in the legislation who are the good guys and the bad guys.

Mr. FRINK. That is right.

Chairman RIBICOFF. If you are going to require certain people who influence others to report, you cannot make the distinction. The question is, how do you prevent this from becoming a vast bureaucracy and overburdening people who have a right to make their position known? I do not think there is a Member of Congress that will say that each side of an issue does not have a right to make its point of view known.

Mr. FRINK. I think it is just to keep the reporting requirements very simple for these kinds of contacts.

Chairman RIBICOFF. If you register, it would be good for both sides. You have a tough fight. You are up against all the trial lawyers. I suppose from your standpoint you would like to know who you are in the ring with.

Mr. FRINK. Exactly. This brings me to another important issue. I do not know what the Federal Government, what the executive branch is doing in no-fault. The Department of Transportation is for it, but in a policy fight, Levi, at Justice, won out and the President came out against it.

The largest lobby in the world is the executive branch of the Federal Government. I do not think they should be excluded in the least. I think that you ought to be able to know and I ought to be able to know and everybody who wants to look at the public record ought to be able to know what they are doing on the no-fault auto insurance

and all the other hundreds of thousands of issues they are involved with upon this Hill. Why can't I know that? Why can't you know that?

Chairman RIBICOFF. Generally, members of the executive branch who are involved in pushing legislation or against legislation do know who they are. They come around the office and talk to you and meet you out in the corridor, and they will tell you why they are for a proposal or against it.

Mr. FRINK. Precisely right—out in the corridor. Why is it not on the public record, just as it is with the AFL–CIO?

Chairman RIBICOFF. You assume, I suppose, if someone from HUD is pushing a piece of housing legislation, he is doing it for the executive branch; or HEW or Department of Defense.

Mr. FRINK. I am not saying they should not be pushing it. I am just saying it ought to be on the public record.

Chairman RIBICOFF. Various secretaries come around and talk to you. Everyone knows; it is not secretive.

Mr. FRINK. The AFL–CIO is not a secret lobbyist, either. But they have to register. They have to announce where they are on a bill. I think the various secretaries and their employees ought to announce where they are on a bill.

Senator METCALF. Mr. Chairman, we have before us at the present time a bill on situs picketing. My office is, I think, the same as any other office. It is overrun with contractors and building trades people and so forth who are lobbying on one side or the other. Are you trying to tell me that I do not know who is representing whom in this lobbying activity?

Mr. FRINK. Not at all, Senator. You picked a case here. The labor movement and the contractors, they are registered under the present law.

Senator METCALF. I do not ask them whether they are registered. If somebody represents the Montana Contractors Association and comes in, I will sit down and talk to him and say I have been for situs picketing ever since I have been in Congress. Then we try to talk about something else, and somebody in the labor movement from the Montana building trades comes up and says, "I want to talk about situs picketing."

I say, "I am tired of talking about that. Let's talk about something else." But I know who they are. Nobody is fooling me about whether they represent one side or the other.

Mr. FRINK. But do the newspapermen and does the public? This is the issue—disclosure.

Senator METCALF. I would hate to have to publish every day, or log every day all those people that are coming in on legislation.

Mr. FRINK. I would not suggest you would, Senator. All I am suggesting is that other than that Montana group that came in to see you, would it not be appropriate for your staff to say, "I assume you are registered."

In the case of the AFL–CIO and the contractors, it would be "yes." But if somebody comes in from Wyoming and he is a little contractor and has a little side angle, I do not think it is inappropriate to ask him if he is registered and, if not, why not. This is the only way it is

going to be policed under the present system we operate under or under the bill you are attempting to work with here. That is the only way it is going to be effectively policed.

Chairman RIBICOFF. In other words you feel, Mr. Frink, that grassroots lobbying should be included?

Mr. FRINK. Yes, sir. I do not mean to make it onerous for them to have to file a number of contacts. Absolutely. You have got to know where the pressure is coming from.

Chairman RIBICOFF. In other words, would you be satisfied with the headquarters of the Sierra Club of Washington, in filing their report, saying that they requested the Sierra Clubs of Hartford, Conn., or Butte, Mont., or Burlington, Vt., to contact their Congressmen and Senators on behalf of this legislation?

Mr. FRINK. Yes, sir. From my point of view it could even be more general. "We are interested in this piece of legislation and will be contacting all of our constituent groups to generate congressional contact."

Chairman RIBICOFF. Would that satisfy you? Would that be all right?

In other words, instead of trying to get every constituent agency or chapter to report, your head organization filed on behalf of all its affiliates?

Mr. SMITH. No, sir, this would not. This would actually centralize. We know centrally what the issues are we are working on, what the mechanisms are that we are using to work on them. It is when you start getting beyond that central focus of requiring reporting that it becomes onerous.

For instance, let's take the Connecticut chapter newsletter. If they in fact print something themselves which is based on the original communication from, let's say, San Francisco, do they have to report that? And so on. Where does the chain end?

Chairman RIBICOFF. In other words, if the U.S. Chamber of Commerce was against the Consumer Protection Agency, and they said, "We are against the Consumer Protection Agency and we are contacting the local chambers of commerce in the following States to also work against this bill," that would satisfy you too?

Mr. SMITH. Certainly.

Mr. FRINK. That is on the public record. You know what is going on. The reporters know what is going on. Anybody who has the interest to inquire will know what is going on. That is all you need to know.

Mr. BROWDER. Senator, I just want to tell you, and I will give this to you for your committee files, the reports we file now include every expenditure of over $10 that our organization makes, the title of every propaganda brochure that we produce and how many copies of it that we sent. Every publication that can be considered a lobbying communication.

Chairman RIBICOFF. I understand that very well.

Mr. BROWDER. I have given you a partial list just to show geographic distribution of organizations that we represent and they are not part of the formal structure. There is no way that we can possibly serve as a central management house for them.

[The information referred to follows:]

Environmental Policy Center

324 C Street, S.E., Washington, D.C. 20003
(202) 547-6500

Some organizations the Environmental Policy has served are:

Appalachian Coalition
Arkansas Ecology Center
Arkansas Wildlife Federation
Bull Mountain Landowners Association (Montana)
Charles River Watershed Assoc. (Massachusetts)
Citizens Committee to Save the Meramec (Missouri)
Citizens Concerned About the Project (Arizona)
CLEAN (Starkville, Mississippi)
COALition Against Strip Mining
Coalition on American Rivers (Illinois)
Coalition on Oil (New England)
Commission on Religion in Appalachia
Committee on Allerton Park (Illinois)
Committee on Big Pine (Indiana)
Committee to Preserve Assateague (Maryland, Virginia)
Committee to Save North Dakota
Conservation Council of Louisiana
Conservation Council of North Carolina
COST (Texas)
Delaware Valley Conservation Assoc. (New Jersey)
ECO-Coalition (Indiana)
Ecology Center of Louisiana
ENACT (Indiana)
Float Fishermen of Virginia
Florida Defenders of the Environment
Florida Wildlife Federation
Friends of the River (California)
Friends of the St. John (Maine, New England)
Idaho Environmental Council
Iowa Confed. of Environmental Organizations
Louisiana Wildlife Federation
Maryland Conservation Council
Miccosukee Tribe of Indians
National Clean Air Coalition
Nebraska Wildlife Federation
New England Fisheries Steering Committee
Northern Environmental Council (Wisconsin)
Northern Plains Resource Council (Montana)
Northern Virginia Conservation Council
Oklahoma Scenic Rivers Association
Operation Coal (Virginia)
Oregon Environmental Council
Palmetto Citizens' Group (Texas)
Passaic River Coalition (New Jersey)

Organizations the Environmental Policy Center has served -- Continued

Pennsylvania Environmental Action
Powder River Basin Resource Council (Wyoming)
Protect the American River Canyons (California)
Quality Environment Countil (Nebraska)
Rappahannock Defense Association (Virginia)
Red River Defense Fund (Kentucky)
SOIL (Save Our Invaluable Land) (Kansas)
Rivers Unlimited (Ohio)
Rocky Mountain Center on Environment
Rutherford County Conservation Council (North Carolina)
St. Marys County Coalition (Maryland)
SAVE (Georgia)
Save the Delaware Coalition (Penn., N. Jersey)
Save the Niobrara River Association (Nebraska)
Save Our Cumberland Mountains (Tennessee)
Scenic Salt Creek Valley Association (Ohio)
Sonoma County Tomorrow (California)
South Carolina Environmental Council
Susquehanna Environmental Council (New York)
Tennessee Citizens for Wilderness Planning
Tennessee Scenic Rivers Association
Texas Committee on Natural Resources
Trumbull Council of Concerned Citizens (Connecticut)
United Family Farmers (South Dakota)
Upper French Broad Defense Association (North Carolina)
Upper Savannah River Defense Association (Georgia, South Carolina)
West Virginia Highlands Conservancy
Wisconsin's Environmental Decade
Worcester County Environmental Trust (Maryland)

Place one copy with the Secretary of the Senate and two copies with the Clerk of the House of Representatives: This page (page 1) is designed to supply identifying data; and page 2 deals with financial data.

PLACE AN "X" BELOW THE APPROPRIATE LETTER OR FIGURE IN THE BOX AT THE RIGHT OF THE "REPORT" HEADING BELOW:

"PRELIMINARY" REPORT ("Registration"): To "register," place an "X" below the letter "P" and fill out page 1 only.

"QUARTERLY" REPORT: To indicate which one of the four calendar quarters is covered by this Report, place an "X" below the appropriate figure. Fill out both page 1 and page 2 and as many additional pages as may be required. The first additional page should be numbered as page "3," and the rest of such pages should be "4," "5," "6," etc. Preparation and filing in accordance with instructions will accomplish compliance with all quarterly reporting requirements of the Act.

Year: 19 75 ←

REPORT

PURSUANT TO FEDERAL REGULATION OF LOBBYING ACT

	QUARTER			
P	1st	2d	3d	4th
			X	

(Mark one square only)

NOTE on ITEM "A"—(a) IN GENERAL. This "Report" form may be used by either an organization or an individual, as follows:

(i) "Employer".—To file as an "employer," state (in Item "B") the name, address, and nature of business of the "employer." (If the "employer" is a firm (such as a law firm or public relations firm), partners and salaried staff members of such firm may join in filing a Report as an "employer.")

(ii) "Employer".—To file as an "employer," write "None" in answer to Item "B."

(b) SEPARATE REPORTS. An agent or employee should not attempt to combine his Report with the employer's Report:

(i) Employers subject to the Act must file separate Reports and are not relieved of this requirement merely because Reports are filed by their agents or employees.

(ii) Employees subject to the Act must file separate Reports and are not relieved of this requirement merely because Reports are filed by their employers.

A. ORGANIZATION OR INDIVIDUAL FILING

1. State name, address, and nature of business.

Environmental Policy Center
324 C Street S.E.
Washington, D.C. 20003

An environmental org. dedicated to research, education, litigation, lobbying

2. If this Report is for an Employer, list names of agents or employees who will file separate Reports for this employer:

Robert Alvarez	Louise Dunlap	Marc Messing	
Richard Ayres	Barbara Heller	Steven Shamburek	
Brent Blackwelder	Janet Hieber	Bart Walker	
Joe Browder	Maxine Lipeles	Joyce Wood	
David Calfee	John McCormick		

NOTE on ITEM "B"—*Reports by Agents or Employees.* An employee is to file, each quarter, as many Reports as he has employers; except that: (a) If a particular undertaking is jointly financed by a group of employers, the group is to be considered as one employer, but all members of the group are to be named, and the contribution of each member is to be specified; (b) if the work is done in the interest of one person but payment therefor is made by another, a single Report—naming both persons as "employers"—is to be filed each quarter.

B. EMPLOYER—State name, address, and nature of business. If there is no employer, write "None."

None

NOTE on ITEM "C"—(a) The expression "in connection with legislative interests," as used in this Report, means "in connection with attempting, directly or indirectly, to influence the passage or defeat of legislation." The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House"—§ 302 (e).

(b) Before undertaking any activities in connection with legislative interests, organizations and individuals subject to the Lobbying Act are required to file a "Preliminary" Report (Registration).

(c) After beginning such activities, they must file a "Quarterly" Report at the end of each calendar quarter in which they have either received or expended anything of value in connection with legislative interests.

C. LEGISLATIVE INTERESTS, AND PUBLICATIONS in connection therewith:

1. State approximately how long legislative interests are to continue. If receipts and expenditures in connection with legislative interests have terminated, place an "X" in the box at the left, so that this Office will no longer expect to receive Reports. ☐

2. State the general legislative interests of the person filing and set forth the *specific* legislative interests by reciting: (a) Short titles of statutes and bills; (b) House and Senate numbers of bills, where known; (c) citations of statutes, where known; (d) whether for or against such statutes and bills.

3. In the case of those publications which the person filing has caused to be issued or distributed, in connection with legislative interests, set forth: (a) description, (b) quantity distributed, (c) date of distribution, (d) name of printer or publisher (if publications were paid for by person filing) or name of donor (if publications were received as a gift).

(Answer Items 1, 2, and 3 in the space below. Attach additional pages if more space is needed.)

1. Legislative interests will continue indefinitely.

2. General legislative interests are to promote sound environmental legislation which will help preserve, restore, and insure rational use of the ecosphere. General interests include legislation on air and water pollution, strip mining, public works projects on rivers and streams, forestry practices, parks, public lands policy and land use planning, energy development, and transportation. (See attached list for specific legislative interests.)

3. Publications: See attached list.

4. *If* this is a "Preliminary" Report (Registration) rather than a "Quarterly" Report, state below what the nature and amount of anticipated expenses will be; and if for an agent or employee, state also what the daily, monthly, or annual rate of compensation is to be. *If this is a "Quarterly" Report, disregard this Item "C 4" and fill out Items "D" and "E" on the back of this page.* Do not attempt to combine a "Preliminary" Report (Registration) with a "Quarterly Report." ←

District of Columbia

Exec. Vice Pres.

NOTE on ITEM "D."—(a) [illegible] includes anything of value. When an organization or individual uses printed or duplicated matter in a [illegible] for such organization or individual—for such printed or duplicated matter—is a "contribution." [illegible] loan, advance, or deposit of money, or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution"—§ 302 (a) of the Lobbying Act.

(b) IF THIS REPORT IS FOR AN EMPLOYER.—(i) *In General.* Item "D" is designed for the reporting of all receipts from which expenditures are made, or will be made, in connection with legislative interests.

(ii) *Receipts of Business Firms and Individuals.*—A business firm (or individual) which is subject to the Lobbying Act by reason of expenditures which it makes in attempting to influence legislation—but which has no funds to expend except those which are available in the ordinary course of operating a business not connected in any way with the influencing of legislation—will have no receipts to report, even though it does have expenditures to report.

(iii) *Receipts of Multi-purpose Organizations.*—Some organizations do not receive any funds which are to be expended solely for the purpose of attempting to influence legislation. Such organizations make such expenditures out of a general fund raised by dues, assessments, or other contributions. The percentage of the general fund which is used for such expenditures indicates the percentage of dues, assessments, or other contributions which may be considered to have been paid for that purpose. Therefore, in reporting receipts, such organizations may specify what that percentage is, and report their dues, assessments, and other contributions on that basis. However, each contributor of $500 or more is to be listed, regardless of whether the contribution was made solely for legislative purposes.

(c) IF THIS REPORT IS FOR AN AGENT OR EMPLOYEE.—(i) *In General.* In the case of many employees, all receipts will come under Items "D 8" (received for services) and "D 12" (expense money and reimbursements). In the absence of a clear statement to the contrary, it will be presumed that your employer is to reimburse you for all expenditures which you make in connection with legislative interests.

(ii) *Employee as Contributor of $500 or More.*—When your contribution from your employer (in the form of salary, fee, etc.) amounts to $500 or more, it is not necessary to report such contributions under "D 12" and "D 14," since the amount has already been reported under "D 8," and the name of the "employer" has been given under Item "B" on page 1 of this report.

D. RECEIPTS (INCLUDING CONTRIBUTIONS AND LOANS)

Fill in every blank. If the answer to any numbered item is "None," write "NONE" in the space following the number.

***Receipts* (other than loans)**

1.	$ None	Dues and assessments
2.	$ 38,380.00	Gifts of money or anything of value
3.	$ None	Printed or duplicated matter received as a gift
4.	$ None	Receipts from sale of printed or duplicated matter
5.	$ None	Received for services (e. g., salary, fee, etc.)
6.	$ 38,380.00	TOTAL for this Quarter (Add items "1" through "5")
7.	$ 69,115.79	Received during previous Quarters of calendar year
8.	$ 107,495.79	TOTAL from Jan. 1 through this Quarter (Add "6" and "7")

Loans Received —"The term 'contribution' includes a . . . loan . . ."—§ 302 (a).

9.	$ None	TOTAL now owed to others on account of loans
10.	$ None	Borrowed from others during this Quarter
11.	$ None	Repaid to others during this Quarter
12.	$ None	"Expense Money" and Reimbursements received this quarter.

Contributors of $500 or More (from Jan. 1 through this Quarter)

13. Have there been such contributors? † Yes
Please answer "yes" or "no":

14. In the case of each contributor whose contributions (including loans) during the "period" from January 1 through the last day of this Quarter, total $500 or more:

Attach hereto plain sheets of paper, approximately the size of this page, tabulate data under the headings "Amount" and "Name and Address of Contributor"; and indicate whether the last day of the period is March 31, June 30, September 30, or December 31. Prepare such tabulation in accordance with the following example:

Amount	*Name and Address of Contributor*
	("*Period*" from Jan. 1 through _____, 19__)
$1,500.00	John Doe, 1621 Blank Bldg., New York, N. Y.
1,785.00	The Roe Corporation, 1511 Doe Bldg., Chicago, Ill.
$3,285.00	TOTAL

NOTE on ITEM "E."—(a) IN GENERAL. "The term 'expenditure' includes a payment, distribution, loan, advance, deposit, or gift of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure"—§ 302 (b) of the Lobbying Act.

(b) IF THIS REPORT IS FOR AN AGENT OR EMPLOYEE. In the case of many employees, all expenditures will come under telephone and telegraph (Item "E 6") and travel, food, lodging, and entertainment (Item "E 7").

E. EXPENDITURES (INCLUDING LOANS) in connection with legislative interests:

Fill in every blank. If the answer to any numbered item is "None," write "NONE" in the space following the number.

***Expenditures* (other than loans)**

1.	$ None	Public relations and advertising services
2.	$ 22,825.32	Wages, salaries, fees, commissions (other than Item "1")
3.	$ None	Gifts or contributions made during Quarter
4.	$ 4,298.87	Printed or duplicated matter, including distribution cost
5.	$ 8,442.04	Office overhead (rent, supplies, utilities, etc.)
6.	$	Telephone and telegraph
7.	$ 930.83	Travel, food, lodging, and entertainment
8.	$ 133.55	All other expenditures
9.	$ 36,635.61	TOTAL for this Quarter (add "1" through "8")
10.	$ 51,341.49	Expended during previous Quarters of calendar year
11.	$ 87,977.10	TOTAL from January 1 through this Quarter (add "9" and "10")

Loans Made to Others —"The term 'expenditure' includes a . . . loan . . ."—§ 302 (b).

12.	$ None	TOTAL now owed to person filing
13.	$ None	Lent to others during this Quarter
14.	$ None	Repayments received during this Quarter

15. *Recipients of Expenditures of $10 or More*

In the case of expenditures made during this Quarter by, or on behalf of, the person filing: Attach plain sheets of paper approximately the size of this page and tabulate data as to expenditures under the following headings: "Amount," "Date or Dates," "Name and Address of Recipient," "Purpose." Prepare such tabulation in accordance with the following example:

Amount	*Date or Dates*	*Name and Address of Recipient—Purpose*
$1,780.50	7-11:	Roe Printing Co., 3214 Blank Ave., St. Louis, Mo.—Printing and mailing circulars on the "Hornbeam Bill."
$2,400.00	7-17, 8-13, 9-12:	Britten & Blatter, 2127 Grenville Bldg., Washington, D. C.—Public relations service at $1000.00 per month.
$4,180.50	TOTAL	

ITEM C.2. SPECIFIC LEGISLATIVE INTERESTS

Price-Anderson act to extend nuclear insurance (H.R. 8631).
Authorization of appropriations for Energy Research & Development Administration (S. 598, H.R. 3474).
Nuclear power plant siting and licensing bills (S. 1717, S. 7002, H.R. 3995).
To amend the Clean Air Act (H.R. 4369, H.R. 4836, H.R. 5220).
Lock & Dam 26 legislation (S. 1825, H.R. 889, H.R. 3842).
Public works appropriations bill (H.R. 8122).
Water Resources Council legislation (S. 506, S. 1299).
Amendments to Federal Water Pollution Control Act (H.R. 9560).
National Energy Mobilization Act (S. 740).
Energy Conservation & Conversion Act (H.R. 5005, H.R. 6860).
Energy Conservation & Oil Policy Act of 1975 (H.R. 7014).
U.S. National Petroleum Reserves (H.R. 49, H.R. 5919).
Outer Continental Shelf Management Act of 1975 (S. 521).
Coastal Zone Management Act Amendments (S. 586, H.R. 3981).
National Oil Pollution Liability & Compensation Act of 1975 (S. 1754).
Comprehensive Oil Pollution Liability & Compensation Act of 1975 (S. 2162).
Surface Mining Control & Reclamation Act of 1975 (H.R. 25).
Federal Coal Leasing Act Amendments of 1975 (S. 391, H.R. 6721).
Coal slurry pipeline legislation (H.R. 1863 & related bills).
National Environmental Policy Act amendments (H.R. 3130).
Open Government Act of 1975 (S. 815) & related bills.
Land resource planning assistance act (S. 584).

ITEM C.3. PUBLICATIONS

Nuclear Alert: Joint Committee On Atomic Energy to Hold Hearings on Brown's Ferry Nuclear Plant Fire, Sept 16, 1975. 100 copies.
Three Important Amendments to the Public Works Appropriations Bill Lose. July 1975. 1000 copies.
Notice alerting members of Congress to examination of Lock & Dam 26 project on CBS' "60 Minutes" show. Aug 19, 1975. 550 copies.
Letter (with others) to Members of Congress re Floor Action on Petroleum Reserve Legislation, H.R. 49 and H.R. 5919. July 7, 1975.
Letter to Members of Congress re H.R. 7014--Commerce Committee Energy Bill. July 16, 1975.
Letter (with others) to Members of the Senate re Recycling Tax Credit in connection with H.R. 6860. July 23, 1975.
Letter to members of the Senate: S. 391 - Federal Coal Leasing Act Amendments of 1975. July 30, 1975.
A Chance to Revive the Strip Mine Bill: September - House Interior Committee. August 1975. 6200 copies.
Possible Amendments to Sen. Magnuson's Liability Bill (S. 1754). Sept 2, 1975. 20 copies.
Proposed Liability Legislation (S. 1754, S. 2162). Sept 4, 1975. 20 copies.
Memorandum (with others) to Senate Interior and Insular Affairs Committee: S. 740, National Energy Mobilization Act of 1975. Sept 10, 1975.
Memoranda to members of the House Science and Technology Committee relating to ERDA authorization. Sept 17, Sept 23, 1975.
Memorandum to Members of the Senate, "Efficient Use: A Potential Energy Bonanza," in connection with ERDA authorization. July 28, 1975. 100 copies.
Letter to members of the Senate in connection with Tunney amendment to ERDA authorization. July 30, 1975. 75 copies.
Letter (with others) to members of the Senate relating to S. 586, Coastal Zone Management Act Amendments. July 16, 1975.
Letter (with others) to members of the Senate relating to S. 521, Outer Continental Shelf Management Act. July 23, 1975.
Oil Letter, July 1975. 400 copies.
Richard E. Ayres, "The Clean Air Act, What Now?" Bulletin of the American Lung Assn., Jan 1975. Distributed to members of Congress.
To members of Subcommittee on Health & Environment, House Committee on Interstate & Foreign Commerce, and Subcommittee on Environmental Pollution, Senate Committee on Public Works:
Richard E. Ayres, "Enforcement of Air Pollution Controls on Stationary Sources under the Clean Air Amendments of 1970," 4 Ecology Law Quarterly 441 (1975).
Memorandum, Health Effects of Air Pollutants at Concentrations below National Ambient Air Quality Standards, Sierra Club, 1975.
Memorandum, Effect of Class II Limitations of Significant Deterioration Regulations, Sierra Club, 1975.
Memorandum (untitled) concerning impact of Class II designation under proposed significant deterioration legislation. 1975.
Various judicial opinions construing the Clean Air Amendments of 1970.

ITEM D.14. CONTRIBUTORS OF $500 OR MORE

Amount	Name and Address of Contributor
	(Period from Jan. 1 - Sept. 30, 1975)
5,000.00	Mr. & Mrs. W. H. Ferry, Box 657, Scarsdale, N.Y.
1,200.00	Sally Forbes, Rt. 2, Sheridan, Wyo.
1,125.00	James P. Johnston, 37 West 72 St., New York, N.Y.
1,000.00	Mrs. Barry Bingham, Sr., Glenview, Ky.
9,000.00	Laurance Rockefeller, 57 East 73 St., New York, N.Y.
9,000.00	Kenneth Greif, 4000 N. Charles St., Baltimore, Md.
30,000.00	John and Henry Kendall, One Boston Place, Boston, Mass.
6,000.00	Morris McClintock, 59 Larchwood Dr., Cambridge, Mass.
5,000.00	Mrs. Maitland Edey, 7 Gates Farm, Vineyard Haven, Mass.
500.00	Georgina Howland, 150 Love Lane, Weston, Mass.
1,000.00	Lucy B. Lemann, 525 Park Ave., New York, N.Y.
7,000.00	Marion Edey, 612 Third St. S.E., Washington, D.C.
500.00	Joan Warburg, 216 John St., Greenwich, Conn.
500.00	Philip Warburg, Dunster House, Harvard University, Cambridge, Mass
1,000.00	Carolyn Alderson, Bones Brothers Ranch, Birney, Mont.
1,000.00	John B. Paine, Jr., 84 State St., Boston, Mass.
1,000.00	Marie Ridder, 4509 Crest Lane, McLean, Va.
500.00	Cynthia McClintock, 8-A Camden Pl., Cambridge, Mass.
5,000.00	Alice Belle Bettman, 4 Beech Lane, Cincinnati, Ohio
3,000.00	Maitland Edey, 7 Gates Farm, Vineyard Haven, Mass.
500.00	Lester Dill, Ozark Cave Assn., Meramec Caverns, Stanton, Mo.
500.00	Edith Wilkinson, 478 Beacon St., Boston, Mass.
500.00	Nancy Stover, 150 College Ave., Poughkeepsie, N.Y.
1,500.00	Council for a Sound Waterways Policy, 222 South Riverside Plaza, Chicago, Ill.
2,000.00	Sierra Club, Mills Tower, San Francisco, Calif.
1,000.00	Mr. & Mrs. William Preston, Weston Rd., Lincoln Center, Mass.
500.00	Benjamin R. Sturges, 1910 Industrial Bank Bldg., Providence, R.I.
10,000.00	Robert Redford, Provo, Utah
10,000.00	Mr. & Mrs. Paul Newman, Westport, Conn.
500.00	IU Conversion Systems, Inc., 3624 Market St., Philadelphia, Pa.
500.00	Universal Oil Products Co., Darien, Conn.
500.00	Peabody Galion Corp., 450 Park Avenue, New York, N.Y.
500.00	Chemico Air Pollution Control Co., One Pennsylvania Plaza, N.Y.,N.
116,825.00	

ITEM E.15. RECIPIENTS OF EXPENDITURES OF $10 OR MORE

Amount	Date	Name and Address of Recipient, and Purpose
1,166.66	.	Robert Alvarez, 324 C St. S.E., Washington, D.C.
1,493.77	.	Brent Blackwelder "
1,750.02	.	Joe B. Browder "
1,252.50	.	David W. Calfee III "
3,499.98	.	Louise C. Dunlap "
463.50	semi-	Barbara Heller "
781.25	monthly	Janet Hieber "
775.50	.	Maxine Lipeles "
1,416.66	.	John L. McCormick "
1,111.10	.	Marc Messing " Salaries, 3rd qtr 1975.
880.00	7/1	Ernest Preate, Jr., 507 Linden St., Scranton, Pa. Fee for legal services, and travel expense.
160.00	7/9	Tim Murphy, Route 7, Grimes Mill Rd., Lexington, Ky. Travel expense.
90.00	7/10	Ric MacDowell, Hamlin, W. Va. Travel expense.
215.48	7/10, 8/18	Louise Dunlap Phone expense.
2,988.00	various	Richard E. Ayres, 324 C St. S.E., Washington, D.C. Fees for professional services.
54.50	7/10, 7/25	Thais Weibel, 324 C St. S.E., Washington, D.C. Fees for office work.
3,273.88	various	Joyce Wood, 324 C St. S.E., Washington, D.C. Fees for professional services.
961.27	7/11	Environmental Action, 1346 Connecticut Ave. N.W., D.C. Reimbursement for strip mine mailing expense (June).
928.07	7/14	Center for Rural Studies, 1095 Market St., S.F., Calif. Reimbursement for strip mine mailing expense (June).
53.99	7/15	Joe Browder Travel and misc. expense.
1,190.93	7/15, 7/25, 8/27	Sierra Club, 324 C St. S.E., Washington, D.C. Use of xerox machine.
939.18	7/25, 8/27, 9/23	Insta Print, Inc., 1910 K St. N.W., Washington, D.C. Duplicating, water resources, strip mining, oil.
160.18	7/25, 8/27	Best Printers, 1127 Penna. Ave. S.E., Washington, D.C. Duplicating, water resources, oil, energy policy.
380.19	7/25	Barbara Heller, 324 C St. S.E., Washington, D.C. Travel expense.
198.00	various	Marla Taylor, 324 C St. S.E., Washington, D.C. Fees for secretarial services.
500.00	7/25, 8/21	Bart Walker, 324 C St. S.E., Washington, D.C. Fees for professional services.
12.95	7/31, 9/4	Joyce Wood Misc. expense.
119.24	8/27	Ecology Law Quarterly, U. of Calif., Berkeley, Calif. Reprints.
1,500.00	9/19	Steven Shamburek, 324 C St. S.E., Washington, D.C. Fee for professional services.
28,316.80		

Mr. BROWDER. Organizations like these, we think, at least, have more to do with the development of the way citizens influence legislation than, if you will forgive me, even most of the highly centralized or relatively centralized national groups. I think the Powder River Basin Resource Council, in Wyoming, the Northern Plains Resource Council in Montana, little organizations that are active in their own region have contact with an organization like ours in Washington and ask us to inquire for them about the development of legislation or executive policy. If these organizations, because of their relationship to us, and they would fall under the terms of the act, then there is no way we would be able to serve them.

Chairman RIBICOFF. I understand.

Do you have any further questions, Senator Metcalf?

Senator METCALF. No.

Chairman RIBICOFF. I want to thank you gentlemen very much. You have been helpful, and I think you are helping to crystalize our thinking here. Your contribution is significant. Thank you very much.

Senator METCALF. I have a letter from the National Governors' Conference, and a telegram from Governor O'Callaghan of Nevada.

Chairman RIBICOFF. No, but he had a statement submitted on his behalf.

Senator METCALF. I have a letter, directed to my subcommittee, which I would like to offer for the record, along with Governor O'Callaghan's telegram.

Chairman RIBICOFF. Without objection, the letter with the accompanying statement and the telegram submitted by Senator Metcalf will be made part of the record at this point.

[The information referred to and the prepared statements of the panel along with those who were unable to attend the hearing, follows:]

PREPARED STATEMENT OF ALLEN E. SMITH, CONTROLLER, SIERRA CLUB

Mr. Chairman, Members of the Senate Government Operations Committee, I am Allen E. Smith, Controller of the Sierra Club. I wish to thank you and your staff for the opportunity to present our views to you today.

The Sierra Club is a grass-roots, voluntary organization of over 153,000 members with the public interest purpose "to restore the quality of the natural environment and to maintain the integrity of its ecosystems." We are engaged in a very broad range of environmental issues through a diversity of educational, research, publication, outdoor and public-policy-influencing programs.

The Sierra Club agrees with Senator Ribicoff's opening remarks of this hearing "that reform of the present 1946 Act is essential." We absolutely agree with the objectives of eliminating the abuses of the lobbying process and support reasonable disclosure as a mechanism to that end. We commend the Committee for addressing itself to this very thorny issue.

However, we are troubled by the fact that S. 2477 does not have any definition of lobbying abuses, nor how it will correct those abuses. S. 2477 does not appear to be aimed at correcting the abuses of the lobbying process, but rather appears to be aimed more at creating a very detailed public record of all the transactions in the lobbying process through a burdensome manner of reporting. It is doubtful that it would reveal carefully concealed bribes or fabricated errors of omission. History has shown that other investigatory methods are necessary to make such determinations.

As a decision maker myself and one who has studied the decision process, I fail to see how the disclosure of all the raw data that presumably went into influencing the decision will in fact show the Comptroller General and the Congress how a decision was made. In the end, only the decision maker himself knows what was the key influence on his decision, whether it was based on considerations

of fact or a bribe. Further, for citizens' groups to describe their decision process in detail would only lead one further away from the points of decision in Congress or the Executive.

While lobbying is not a substantial part or major purpose of the Sierra Club, it is now a matter of history that we were reorganized under Sec. 501(c)(4) of the Federal Tax Code as a non-tax-deductible nonprofit organization. To provide for tax-deductible nonprofit programs separately, we have the Sierra Club Foundation, which is organized under Sec. 501(c)(3) of the Federal Tax Code. The Tax Code considers influencing the legislative process through direct communication with Congress to be lobbying, but not direct communication with the Executive. This is one system of defining lobbying which the Sierra Club already accounts for, but is different from the system and definition of lobbying we would have to account for under S. 2477. It is often difficult for our volunteers to understand the existing differentiations, but S. 2477 would raise the complexity of definition to an intolerable level. For example, if our volunteers were trying to influence timber cutting practices on a given national forest it would not be lobbying under the Tax Code, but would be lobbying under S. 2477. And if these same volunteers then turned around to contact their own Senators and Congressmen on a bill dealing with forest practices, it would be lobbying under the Tax Code, but not lobbying under the exclusions of S. 2477. In short, there is a basic inconsistency of construction between S. 2477 and the Federal Tax Code in the defining of lobbying which will further serve to aggravate the process of differentiating between the uses of tax-deductible and non-deductible funds, and compliance with such a lobbying law.

Membership in the Sierra Club also constitutes membership in our structure of 286 affiliated chapters, groups and sections as a vehicle for direct participation in a democratic process, within our own ranks, that serves to produce focused environmental policy positions as the basis of grass-roots citizen action. It is in this decentralized process that we would have difficulty complying with a lobbying bill such as S. 2477 and its very broad definitions.

It is important for the members of the Government Operations Committee to understand that these 286 affiliated entities have independent, volunteer citizen management of both their limited finances and their environmental actions within a broad policy framework established by the elected Board of Directors of the Sierra Club. In my capacity as Controller of the Sierra Club, I manage its finances and reporting, but not that of our 286 affiliated volunteer entities except at fiscal year end when my office files a consolidated tax return for the Sierra Club. It is the volunteer citizen aspect of our organization that is its greatest strength, but it also represents an almost impossible reporting problem.

To place a burden such as S. 2477 on us could cost us collectively at least $250,000 annually to systematize, report and control, since neither we nor our 286 affiliates are equipped to handle it. In short, it would cost the Sierra Club about 5% of its annual budget and could budgetarily freeze us out of being effectively involved as a public interest voluntary organization in the legislative and executive process. I doubt that anyone would deny that that would have a "chilling effect" on the Sierra Club.

Gentlemen, this legislation embodied in S. 2477 and like bills could mandate that I annually attempt to collect and report as many as 50,000 lobbying transactions directed at Congress and the Executive by private citizens. Private citizens, most of whom, if they chose not to organize as the Sierra Club, but rather exercised their "private citizen" prerogatives as drafted in S. 2477, would be exempt from reporting at all.

The fact that individually concerned citizens (not deemed lobbyists under S. 2477) become organized in a focused manner on many issues (such as through the Sierra Club) and therefore become qualified as lobbyists within the framework of a voluntary organization under S. 2477 makes them individually no less of a citizen and no less entitled to their First Amendment rights. It is beyond our belief that this bill is not an infringement on our Constitutionally guaranteed rights of freedom of speech, when in fact it will direct us to purchase those rights by mandating the installation and operation of costly reporting systems as the legal basis of our access to Congress and the Executive.

In summary, we oppose the registration and reporting burdens that would be placed on voluntary citizens' organizations by S. 2477 and their resultant restriction on Contitutional rights.

Mr. Chairman, again may I express my thanks for this opportunity to speak and I will be happy to answer any questions.

PREPARED STATEMENT OF JACQUELINE M. WARREN, ENVIRONMENTAL DEFENSE FUND

I am Washington Counsel for the Environmental Defense Fund, Inc. (EDF), a private, non-profit national organization with a membership of some 50,000 persons. We are a public interest law firm advocating scientifically sound solutions to the nation's environmental problems before government agencies and the courts.

Although EDF is basically a litigating organization, we also devote a substantial amount of time to commenting upon and otherwise participating in the activities of various federal agencies concerning a broad range of environmental issues. These efforts are an attempt to represent otherwise under-represented interests whose voices have not traditionally been heard by either federal agencies or the Congress. While such efforts are necessarily limited by our resources and by the fact that we are a 501(c)(3) organization, they do provide at least some counterweight to the imbalance in the present system created by the extensive lobbying efforts of powerful and influential special interests. We believe that S. 2477 and other bills before this Committee, by so broadly defining lobbying as to encompass even our meager efforts to affect the actions of the executive will severely and adversely impact EDF both in terms of our tax status, and our attempts to force consideration of underrepresented interests in federal agency decisionmaking.

Before detailing the specific problems created by the broad definition of lobbying and by the burdensome registration and reporting requirements with which we will necessarily have to comply, let me state that we acknowledge in principle the need for reform of the federal lobbying law. If, however, the purpose of the reform is, as stated, to enable the public to participate as effectively as possible in the legislative process, and to correct past abuses without interfering with the right to petition for a redress of grievances, S. 2477 will not accomplish its purposes with respect to organizations like EDF. The most likely result will be that the interests we and groups like us represent will be represented even less frequently before the federal agencies and Congress.

I. COMPLEXITY OF THE BILL WILL DETER CITIZENS' PARTICIPATION

S.2477 is a very complicated bill. The numerous definitions and subtle distinctions between various forms of lobbying and categories of lobbyists require construction by a lawyer. Certainly if the conduct of private citizens and citizens' organizations is to be governed by provisions which are enforceable by civil and criminal penalties, the proscriptions on conduct should be as clearly and precisely articulated as possible. This is especially true where the proscriptions carve out an exception to constitutionally-guaranteed rights. The practical effect of imposing such complex requirements as are contained in S.2477 as presently drafted, will be to deter citizen participation in the legislative and administrative process because of uncertainty about what conduct is or is not covered by the lobbying law. Moreover, the financial and administrative burden of compliance with S.2477 will be hardest on those least able to afford it—individuals, citizens' organizations, and public interest organizations. Such organizations usually operate on shoestring budgets with minimum staffs, and do not routinely employ attorneys unless their principal function is litigation. They simply cannot afford to expend their limited resources to fulfill the extensive reporting requirements which a broad definition of lobbying will impose upon them. Since the huge organizations and corporations who presently lobby can easily afford to comply with these requirements, and, in fact, can write it off as a tax-deductible business expense, an already existing disproportion in lobbying presence and influence will be accentuated.

II. PROBLEMS CREATED BY THE OVERLY-BROAD DEFINITION OF LOBBYING

Under S.2477, an organization such as EDF becomes a lobbyist if it makes only 12 lobbying communications within a 3-month period, or if it makes a single "lobbying solicitation" regarding, *e.g.*, an "issue before the executive branch." Thus, for example, if EDF's employees in any of our five offices receive a total of twelve inquiries from senate or congressional offices on twelve separate issues, EDF will be required to register as a lobbyist, even though the inquiries were not initiated by EDF and indeed were solicited by Congressmen's and Senators' offices. The task of simply keeping count of and reporting such communications

will impose a significant administrative burden upon us. In order to avoid the outcome of such activity, *i.e.*, registration as a lobbyist with all of the consequences that entails, EDF would probably decide to refrain from answering such inquiries. As a result, even though such contacts could under no reasonable definition of lobbying be considered "substantial", they are likely to be completely cut off by this bill.

A second example drawn from our experience is also illustrative of the problem. EDF staffers routinely undertake to read the Federal Register for the purpose of alerting numerous smaller organizations who have neither the resources nor time to do so, as to proposed rules and other administrative actions about which they would certainly wish to comment. The notices are copied and mailed with an explanatory memo to the various groups involved in one or another area of environmental concern. The purpose of alerting the other organizations is to broaden citizen input into federal agency decision-making. Nevertheless, such efforts appear to be "lobbying solicitations" under §4(f)(2) or 4(f)(3) of S.2477 and would therefore trigger the registration and reporting requirements of the bill. Since these requirements are administratively cumbersome and expensive to meet, and could threaten our tax-exemption as a 501(c)(3) organization, EDF would be more likely to discontinue such activity than to register as a lobbyist. Once again, the practical result would be less rather than more public participation in the processes of government.

A. Impact of registration on 501(c)(3) organizations

Despite the fact that section 8 of S. 2477 provides that an organization shall not be denied exemption under 501(a) and (c) of the Internal Revenue Code, "solely because such organization complies with requirements of sections 5, 6, & 7 of this Act," registration as a lobbyist must inevitably threaten the organization's tax-exempt status. In the first place, IRS might decide to require the filing of the same reports required by S. 2477, which they, in turn, could use to determine whether an organization is devoting a "substantial" amount of its resources to influencing legislation. At the very least, IRS will certainly check the reports submitted to the GAO in order to make the same determination. Unless the GAO summaries and the IRS clearly make a distinction between executive and legislative lobbying, organizations whose legislative lobbying efforts have in fact been *de minimis* or non-existent may find their tax exemptions have been placed in jeopardy by activities which the IRS has in the past not considered to be "substantial" nor even viewed as "attempts to influence legislation." An additional question which arises in this connection is whether, because some of the issues we discuss with executive branch agencies find their way to the Congress for action, such situations, which may later have a bearing on shaping the legislative issue, might be construed as attempting to influence legislation. Since we do not believe it is the intent of the Committee inadvertently to restrict the activities of 501(c)(3) organizations as a result of this legislation, we would urge the Committee to adopt the suggestion of Alan Morrison of Public Citizen that the number of lobbying communications required before registration is mandated be substantially increased, and that the requirement of registration based solely upon solicitations be deleted.

III. REPORTING REQUIREMENTS ARE EXCESSIVELY DETAILED AND BURDENSOME

The broad sweep of the definition of lobbying will require organizations such as EDF to register as lobbyists on the basis of a very minimal number of congressional contacts or even a single "lobbying solicitation." Once this almost unavoidable requirement has been met, the reporting sections of the bill would become applicable. Thus, EDF would be required to file reports on every issue on which even one communication was made during a 3-month period, including the name of each employee making any such communication. Such a requirement can become an onerous burden when the myriad issues with which EDF is concerned are considered, especially since reports will be required on responses to Congressional inquiries. Even though a single communication cannot by definition be considered a "substantial" lobbying effort, the total time, effort and expense involved in keeping records of and reporting such communications could be substantial.

Even for "solicitations" involving only "issues before the executive branch," EDF and other similarly-situated organizations would be required to submit detailed reports about such solicitations, attaching samples or transcripts,

estimating the numbers of persons reached on a state-by-state basis, and describing in specific detail the particulars of such solicitation. The oversight and record-keeping responsibilities arising from these obligations will be expensive to administer and will be unduly burdensome upon organizations such as EDF which are operating at or near the deficit level. They will be insurmountable obstacles to public participation for smaller groups with even fewer resources than ours. Moreover, the requirement of § 7(d)(4), that the names of contributors be disclosed, in addition to the constitutional questions it raises, is likely to deter contributors who are entitled to keep their charitable contributions anonymous. Such a requirement will have a deleterious effect upon our ability to attract and keep members, and could have a devastating effect on our already precarious financial situation. This issue becomes particularly significant for 501(c)(3) organizations in light of the current efforts in the House to legislate a definition of "substantial" efforts to influence legislation, and thereby increase the amount of lobbying such organizations can do without endangering their tax exempt status. It is ironic that at the exact moment that efforts are underway to enable non-profit groups to engage in more Congressional lobbying, a sweeping reform of the lobbying law will effectively prevent us from taking advantage of increased opportunities to counterbalance the very persistent and effective lobbying efforts of the large special interests. The reporting requirements of S. 2477 may be a nuisance to those interests, but their lobbying efforts will not be deterred or discontinued as a result. The interests we represent will be less fortunate in this respect.

There are two additional features of S. 2477 which cause us serious concern. The provision of § 10(9) which requires the Comptroller General to prepare and submit special reports on the lobbying efforts of any person, at the request of any member of the Senate or House, has great potential for abuse. The provision of § 12(a)(2), that the Comptroller General shall investigate the activities of any person, on the basis of information furnished to him by any person, has similar potential. It has been our experience that as a result of our taking what some regard as objectionable positions before the legislative branch, various Congressmen and private citizens have urged the IRS to investigate EDF's lobbying activities as a tax-exempt organization. These efforts are a form of harassment which, if extended to our activities before the executive branch, could seriously hamper EDF in carrying out the purposes for which it was organized. In light of the extensive investigatory powers vested in the GAO by S. 2477, the threat of such investigations is likely to impede even further our already conservative approach to attempting to influence issues before the legislative branch as well as to interfere with our more numerous and frequent activities before the executive branch.

V. CONCLUSION

Organizations such as EDF came into being in response to a perceived public need for more effective representation in government decision-making of the views of interests who were traditionally under- or unrepresented. The voice of the public interest community has helped to counterbalance the far more extensive and influential "special interest" lobby whose abuses inspired the present efforts at reform of the lobbying law. In order to avoid becoming the unintentional victims of a necessary reform measure, we urge the Committee to consider the problem areas we have delineated, and to take steps either to exempt groups such as EDF completely from the requirements of the bill, or else to narrow the definition of lobbying so that only genuinely substantial legislative lobbying efforts will be covered.

PREPARED STATEMENT OF GARY R. FRINK

Mr. Chairman and Members of the Committee, I am Gary R. Frink, a member of the bar in Michigan and the District of Columbia. I am glad to have an opportunity to testify on S. 2477. I am Executive Director of the National Committee for Effective No-Fault, and Washington counsel for the Organization for the Management of Alaska's Resources, Inc. I am a registered lobbyist for both organizations.

I do not hold myself out to be an authority on lobby reform. I do, however, have some ideas about it based on my experience as a working lobbyist. In my opinion any meaningful federal lobby reform must contain at least the following elements:

All persons except bona fide constituents who contact Congressional offices must, without exception, register as lobbyists—and I emphatically include lobbyists for government. I would not include an individual's correspondence with any member of Congress, only personal and telephone contact by non-constituents.

The total compensation paid to a lobbyist must be disclosed. If his fee covers non-lobbying services as well, he should break it down to show that.

In the real world the members of Congress and their staffs can be the only meaningful enforcers of the reform which S. 2477 would bring about.

Since *all* lobbyists should be registered, in order that Congress can clearly know all of the forces involved in a particular legislative battle, registration and report making should be kept as simple as humanly possible.

The federal government is far behind many of the states in lobby regulation. For example, before a lobbyist is allowed to enter the State House in New Jersey, he must register, obtain a badge and wear that badge while he is in the State House. In New Jersey clearly there is no question about who has complied with the lobby registration requirements. In Michigan lobbyists must register and obtain a lobbying number for identification.

My basic attitude toward lobbying is that there should be more rather than less disclosure. Traditionally and historically, lobbyists have resisted disclosure. To me this is shortsighted. More than anything else, disclosure will rid lobbying of the concealment, secrecy and deviousness that have given it a bad name.

My concern about S. 2477 is that although it opens many windows, it does not open them all. Lobbying's house, while better ventilated, still would not be completely open. Why shouldn't it be?

I am convinced that this nation is in the midst of the most far-reaching, healthy reform of its political processes in its history. Proposals such as this one are the muscle of that reform. I don't credit any single reason for this welcome state of affairs. I credit the basic good sense of the American people and their elected representatives. The system can work better. Given a little more time and help it probably will.

I assume that Senator Ribicoff and the other sponsors of S. 2477 have two basic concerns about lobbying. First, they believe Congress should be specifically aware of who is trying to influence it. Anybody, with the exception that follows, who makes one personal contact with one member of Congress or with Congressional staff for the purpose of influencing Congressional action is a lobbyist, and should register as one. Only then can we begin to bring lobbying into sharp focus. The exception, of course, is an individual constituent hired by nobody but his own good conscience, who comes to Congress entirely on his own to persuade, inform or ask assistance of his elected representatives. Attempting to regulate this activity would strike at his constitutional right to petition Congress; kill the root of representative government. S. 2477 would leave the conscience of constituents alone and so would I.

Second, the total resources behind a lobbying effort should be part of the public record. My concern with S. 2477 is that it's not nearly tough enough. For example, it ignores lobbying by governments—federal, state and local. Altogether, government is the most massive, action lobby there is. In several states, lobbying laws recognize this. Why shouldn't the federal lobbying law? Members of Congress and the public should know when the huge resources of a federal department, for instance, are committed to defeat or pass particular legislation. Disclosure is especially important because governments become involved in what I call "surrogate lobbying". Corporation X lobbies openly and legally on behalf of its interests. At the same time the city and state where Corporation X is located are putting all the pressure on Congress they can on the corporation's behalf. I don't oppose the practice. I do condemn its concealment. Bringing government into the lobbying picture is a major step toward what I believe should be an ultimate, important objective of legislation such as this.

That objective is a public record that shows the total resources behind an effort to influence Congress. To reach this goal trade associations that lobby, for instance, must be required to disclose all their income. They must disclose also how that income was used—information programs for members, annual

meetings, lobbying. If a law firm lobbies for a client the entire fee that client pays, to the law firm or to its satellites, should be spread on the record, because Congress and the public need to know the *total* economic impact; both ought to have as concise an idea as possible of the magnitude of the forces committed to legislative causes.

Provisions such as I suggest might err on the side of overkill, but that is certainly better than not enough disclosure. When conducting the nation's business there is no such thing as too much honesty.

We're all familiar with the lobbing law now on the books. One of the reasons we're here today is that it's unenforceable and thus unenforced. A toothless law everybody knows they don't have to pay any attention to is worse than no law at all. It gives the *impression* that violations are being discovered and prosecuted.

Even under the present soft lobbying law, reports and information flood the offices of the Secretary of the Senate and the Clerk of the House of Representatives. Nothing much happens as a result. If we tighten the law and require *all* lobbyists to register and file basic information about what they're doing, the flood will become a tidal inundation. Once we have all this background about lobbying, will there be fewer abuses? And if so, why? I say "yes" for the following reasons.

I propose what amounts to citizen enforcement of the lobbying law. The citizens in this case aren't self-appointed vigilantes. They are the members of Congress and Congressional staff that lobbyists seek to influence. If a lobbyist as distinct from a constituent approaches a member or staff, that person must ask a simple question. "Are you a registered lobbyist?" The answer "no" or an equivocal answer cuts the circuit then and there. Believe me, lobbyists are realists. Word will spread.

As I end my testimony I should summarize it. Total registration, total disclosure and enforcement at the level where lobbying actually occurs will do much to cure abuses. ultimately, nothing else will. Thank you.

NATIONAL GOVERNORS' CONFERENCE,
Washington, D.C., September 22, 1975.

HON. ABRAHAM RIBICOFF,
Senate Committee on Government Operations,
Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Governor Philip W. Noel, on behalf of the National Governors' Conference, recently testified before Rep. Flowers' House Judiciary Subcommittee on various bills calling for the public disclosure of lobbying activities. Most of the Senate and House bills would require employees of state and local governments who make contacts with Members of Congress to register as lobbyists, including employees of state, regional and national associations of county officials, mayors and governors.

The National Governors' Conference supports a more effective national law for the disclosure of lobbying activities, but we take strong exception to coverage of state and local officials and their employees. The National Governors' Conference believes *all* public officials acting in their official capacities should be exempt from the law. This would include federal, state and local employees as well as employees of our associations such as the Regional Governors' Conferences and the National Governors' Conference.

Attached is a copy of Governor Noel's testimony in support of the NGC position. As the Senate Committee on Government Operations considers the lobbying disclosure bills, the Governors would appreciate your consideration of their views.

Most sincerely,

JAMES L. MARTIN,
Director, State-Federal Affairs.

PREPARED STATEMENT OF HON. PHILIP W. NOEL, GOVERNOR OF RHODE ISLAND

Thank you Mr. Chairman and Members of the Committee for giving the organizations of state and local officials an opportunity to testify on related bills providing for the public disclosure of lobbying activities. I and my colleagues represent the National Governors' Conference, the National Conference of State Legislatures, the National League of Cities, the U.S. Conference of Mayors and the National Association of Counties.

The Governors, Legislators, Mayors and County Executives of this nation support the public disclosure of lobbying activities and commend the Congress for taking up this issue. The States should be commended for leading the way for the nation on this issue. In the last two and a half years alone over twenty-two States have enacted new public disclosure of lobbying laws, including Rhode Island and Tennessee.

It is no secret that the current law is inadequate in definition, scope and enforcement. A new law should correct these deficiencies without creating an unworkable paperwork jungle of reports that defeats the very purpose of public disclosure of lobbying activities.

Lobbying is, and properly so, a carefully guarded right of a free people. Nevertheless, the magnitude of special interest lobbying in the States and nation necessitates its full and timely disclosure. "Otherwise", as former Chief Justice Warren wrote in upholding the federal lobbying act, "the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal." (347 U.S. 612, 625).

THE PRIMARY ISSUE

We are here today to state our position that we and our employees and organizations are in the purest definition public officials working for the "public weal" and not representatives of a private or special interest group. We firmly believe that as public officials we come under the same provisions as do Congressional and Federal officials. We therefore sincerely request that the Congress exempt all public officials including state and local officials and employees acting in their official capacities and that the record show that this includes the employees of our national organizations.

THE MOST RECENT DEBATE

The current Federal Regulation of Lobbying Act of 1946 requires "any person who shall engage himself for pay . . . for the purpose of attempting to influence the passage or defeat of any legislation by the Congress . . ." to register as a lobbyist and file regular reports of his expenditures. However, the Act specifically excludes ". . . any public official acting in his official capacity." The public official exemption was generally assumed to include employees of organizations of exempted officials until the Autumn of 1973 when former Attorney General Saxbe advised the National League of Cities/U.S. Conference of Mayors that they must register their employees engaged in congressional relations and to supply records of their lobbying activities for the previous five years or face criminal penalties up to a $5,000 fine and a year in jail. Faced with criminal prosecution, the Mayors retained counsel and began preparation for legal action in federal court to declare their employees exempt from the reach of the lobbying statute.

Because of the implications for its own employees, the National Governors' Conference originally joined the other public interest groups in retaining counsel but withdrew from the suit following a meeting of the National Governors' Conference Executive Committee in June of 1974. The Executive Committee directed its employees not to register and advised the Attorney General of its action. In a letter to Attorney General Saxbe, then Chairman Daniel Evans of Washington said, "I consider it is my duty to accentuate the point . . . that the Governors totally reject the idea that employees . . . who are supported by legislative appropriations from the several states, be required to register as lobbyists."

The local government organizations filed suit for declaratory judgment last fall and, in a decision announced December 13, 1974, Judge Gerhard Gessell of the U.S. District Court in the District of Columbia found for the plaintiffs. His order stated "that each such officer and employee is exempt from registration under the Federal Regulation of Lobbying Act so long as such person engages in lobbying undertaken solely on the authorization of a public official acting in his official capacity and such person receives his sole compensation and expenses for lobbying actively directly or indirectly from public funds contributed by cities, counties or municipalities, as the case may be."

In distinguishing the lobbying of governmentally financed organizations from private groups. Judge Gesell referred to a 1954 case upholding the constitutionality of the lobbying act. In that case, the U.S. Supreme Court held the purpose of

the Act was to force disclosure by private "special interest groups seeking favored treatment while masquerading as proponents of the public weal."

In his opinion, Judge Gesell sharply distinguished organizations of state and local officials from the type of organizations referred to in the Supreme Court case. "Here," he said, there can be no doubt that all officers and employees of the plaintiff organizations are engaged in lobbying solely for what may properly be stated to be in 'the public weal' as conceived by those in Government they represent who are themselves officials responsible solely to the public and acting in their official capacities." In examining the legislative history of the lobbying act, Judge Gesell noted the Act "was intended to apply to business, professional and philanthropic organizations, not to organizations of public officials and their agents."

Attorney General Levi did not appeal Judge Gesell's decision. We are now back to start, as Congress takes actions for a new lobbying regulation law. It is at this point that we seek your understanding that public officials, federal, state and local are not the object of such legislation and since we are already "public", we should be exempted.

BASIC PRINCIPLES THAT APPLY

Before briefly reviewing the salient arguments in support of the proposition that the Lobbying Act was not intended to apply nor could it constitutionally apply to officers or employees of state and local governments and their association employees, I believe that there are some principles involved which deal directly and address a most fundamental issue; the governance of our society. These issues deal directly with the role of state government and thereby its chief executive, the Governor, and it further deals with the ability and the right and requirement of the Governors of the States to impact, shape and formulate national policy and national legislation. Correlatively, it addresses the issue of "the public interest and who represents that interest." It is my view that the following principles apply:

1. The Constitution and the notion of Federalism require that the people in each State elect a Governor, not only for the governance of each State, but as a voice of the people as it affects national policy issues and as these policies are constructed into legislation.

2. The agent(s) of the Governor or Governors represent, therefore, the voice of the people.

3. National policy and legislation does affect not only one, but combinations of States in the regional context or collectively, the total 50 States.

4. The action of a Governor and/or a series of Governors (NGC) are financed by general purpose revenue, which are *not* "solicited, collected, . . . for the principal purpose of passing or defeating legislation." In fact, the actions of a Governor or a combination of Governors is indeed an extension of the discharge of public duty by the Governors of their individual states.

5. The enclosed copy of the Act states in Section 267, "a public official acting in his official capacity is excluded from the requirements of registration." In Section 266, the Act is limited to cover those who receive funds "principally" to aid, or "principal purpose of which person" is to aid in the passage or defeat of legislation.

Regrettably, the actual history of the Act while it was making its way through the Congress is not as explicit on the public official exemption as one would like. At page 1088 of the July 25, 1946 *Congressional Record* of the House of Representatives, the following colloquy comes tantalizingly close:

"Mr. Curtis: What is the situation in reference to the executive department of the Government lobbying?

"Mr. Dirksen: With reference to the Government lobby, as the gentleman refers to it, there is a provision here that shall not apply to an official of the Government who comes here in his official capacity. Certainly if they are going to send a lot of folks up here who do not come down in their official capacity, we are going to find out quickly and we know what to do with them through the instrument of an appropriation bill."

The implicit position that "public officials" and their agents are exempt, leads to the position that Governors and their agents have perhaps more legitimacy because of the electoral process than Federal departmental representatives.

There is further, an elementary principle of constitutional and statutory law which often guides the courts in statutory questions of this nature. The highest

respect is given executive and administrative interpretations of legislation, especially when the interpretation has been uniform, continued over an extended period of time commencing with the first application of the statute to the activity in question. (As one example only from a long line of cases, in *U.S.* v. *Leslie Salt Co.*, 350 U.S. 383 (1955), the Supreme Court upheld the argument of the taxpayer corporation that the IRS should be bound by its own consistent interpretation of some 30 years of what constituted a "debenture" for tax purposes.)

The Federal Regulation of Lobbying Act was adopted as part of the Federal Reorganization Act of 1946. For more than 25 years, the consistent interpretation of the Attorney General has been that the Act did not apply to organizations of elected officials such as the National Governors' Conference, the National Conference of State Legislatures, the National Association of Counties and the U.S. Conference of Mayors/National League of Cities.

CONSTITUTIONAL ISSUE

The traditional approach of a legal counsel in the case of the legislation titled Federal Regulation of Lobbying Act would go to the analysis of the law itself, the organization of the National Governors' Conference and an analysis of staff functions and the applicability of the law to the workings of the National Governors' Conference. What is involved goes to the issue of public interest and the delegation of that public interest in the elective process. The Governors singularly and collectively represent the people. Singularly and collectively, their position through the electoral process assumes a position which is above that of special interest and is the process of governance and the articulation of public policy.

Surely, the Act was neither designed nor conceived to be constructed to restrict the articulation of public policy by state and local governments. For if the issue of the first amendment in its most pure sense applies, it is to grant to the voice of the people access to the Federal Government. The constitutional system and the first amendment are designed to allow the greatest freedom of access to Congress. In *U.S.* v. *Harriss*, 347 U.S. 612, 625 (1953), there is the following dicta:

"Present day legislation complexities are such that individual members of Congress can not be expected to explore the myriad pressure to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on the ability to properly evaluate such pressures. *Otherwise, the voice of the people may all too easily be drowned out by the voice of the special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to prevent.*" (Emphasis added).

This dicta has the converse clear implication. It is critical that the "public weal" be heard.

Furthermore, the delegation of powers through the Federal Government as contained in the Constitution and legitimized by the actions of the several States forming that Union clearly defined the importance of the issue contained in the first amendment, "that Congress shall make no law abolishing the freedom of speech or the press or the right of the people to petition the Government against grievances." The concurrence by the several states proscribing the Federal Government is indeed a central issue of the problem we face. Who speaks for the people? Surely, the electoral system directly speaks to that issue.

Indeed, this issue finds its roots in the deliberations prior to the Constitution and the deliberations which took place in its drafting. That is, to the issue of the state-federal relations.

James Madison writing of that balance in *The Federalist*, No. XLV, wrote "But ambitious encroachments by the federal government, on the authority of the state governments, would not excite the opposition of a single state, or a few states only. They would be signals of general alarm. Every government would espouse a common cause. A correspondence would be opened. Plans of resistance would be concerted." In the same paper, Madison questions rhetorically "But what degree of madness would ever drive the Federal Government to such an extremity?" In this case, a narrow legalistic interpretation has created what hopefully is not a position of the Federal Government, a position of such extremity that it would indeed recall the admonitions of James Madison.

Finally, I would call to your particular attention, what I deeply consider to be the historical issue which surely transcends that of a narrow legal interpretation of the law.

We are approaching the bicentennial of our nation, an occasion when there is the unique requirement to draw upon the roots of our society and its history and to re-appraise, once more, the basis of our nation and what it means in our contemporary society. As individuals and as a collectivity of Governors there is no greater imperative than to re-assess the role of the State government, its role and function through history, both in its founding as well as in the formulation of that basic document, our Constitution.

We are confronted not by the requirements of re-drafting the Constitution, but that of recognizing the demands of our contemporary society, the evolved Federal system and more imperatively the dynamics of change, some small, some large, in the magnificent flexibility which the Constitution allows.

The stewardship we hold exceeds that of chief executives of individual States. There is the inescapable imperative that our stewardship extend collectively in the governance of our society and as it is based upon the legitimacy of our elected office.

As one of the chief executives of the original thirteen governments, who by their act of consensus and their act of ratification, gave birth to our Federal system, I commend to you your thoughtful consideration of the significance of this arguably insignificant issue. It is my view that the arena in which we exercise our public duties cannot be the arena prescribed by the arguments of a law designed to regulate the activities of lobbyists representing narrow special interests.

[TELEGRAM]

CARSON CITY, NEV., *November 5, 1975.*

Hon. HOWARD W. CANNON,
U.S. Senate,
Washington, D.C.

My letter of September 10 indicated concern relative to bills which would require employees and officers of public interest groups to register as lobbyists. I appreciate your response indicating support of my position.

Subsequent to your letter, I received a copy of S. 2477 which exempts State and local government officers and employees from the lobbying provisions. This bill is a great improvement on earlier bills, however, it still considers organizations of State and local government officials, such as leagues of cities, county commissioner associations, national Governors' conference, and many others, as lobbyists. I strongly support the exemption of officers and employees and urge you to continue to seek exemption for regional and national organizations representing local officials and employees acting in their official capacity.

The reporting requirements of this bill, even though represented as simple, would require burdensome recordkeeping and reporting, which cannot help but impose additional costs on such groups and ultimately higher costs to the public.

It is my understanding that the Senate Government Operations Committee has set aside Thursday, November 6, as a day for Governors to testify on this proposed legislation.

It would be most appreciated if you could arrange to have the substance of this telegram presented to Senator Lee Metcalf of Montana, who chairs the Subcommittee on Reports, Accounting, and Management.

MIKE O'CALLAGHAN,
Governor of Nevada.

Chairman RIBICOFF. The committee will stand adjourned, subject to call of the Chair.

[Whereupon, the hearings were concluded at 11:20 a.m.]

APPENDIX

94TH CONGRESS
1ST SESSION

S. 774

IN THE SENATE OF THE UNITED STATES

FEBRUARY 20, 1975

Mr. PERCY (for himself and Mr. RIBICOFF) introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

To regulate lobbying and related activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Public Disclosure of Lobbying Act of 1975".

DEFINITIONS

SEC. 2. As used in this Act, the term—

(1) "person" includes a corporation, company, association, firm, partnership, society, or joint stock company, as well as an individual;

(2) "the policymaking process" means any action

taken by a Federal officer or employee with respect to any bill, resolution, or other measure in Congress, or with respect to any rule, adjudication, or other policy matter in the executive branch;

(3) "Federal officer or employee" means any officer or employee in the legislative or executive branch, and includes a Member of Congress, Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(4) "income" means the receipt or promise of any consideration, whether or not legally enforceable;

(5) "expenditure" means the transfer or promise of any consideration, whether or not legally enforceable;

(6) "quarterly filing period" means any calendar quarter;

(7) "voluntary membership organization" means an organization composed of individuals who are members thereof on a voluntary basis and who, as a condition of membership, are required to make regular payments to the organization;

(8) "identification" means in the case of an individual, the name, address, occupation, principal place of business, and position held in that business, of the individual, and in the case of a person other than an individual, its name, address, principal officers, and board of directors, if any;

(9) "lobbying" means a communication or the solicitation or employment of another to make a communication with a Federal officer or employee in order to influence the policymaking process, but does not include—

(A) an appearance before a congressional committee, subcommittee, or joint committee or the submission of a written statement thereto or to any Federal executive department, agency, or entity at the request of such department, agency, or entity;

(B) any communication or solicitation by a Federal officer or employee; or

(C) except with respect to a publication of a voluntary membership organization, any communication or solicitation through the distribution in the normal course of business of any news, editorial view, letter to an editor, advertising, or like matter by—

(1) a periodical distribution to the general public;

(2) radio or television broadcast; or

(3) a book publisher;

(10) "lobbyist" means, with respect to any quar-

terly filing period, any person who engages in lobbying during that period and who—

(A) receives income of $250 or more for such lobbying during that period, whether such income is the prorated portion of total income attributable to that lobbying, or is received specifically for the lobbying;

(B) receives an income of $500 or more for such lobbying during a total of four consecutive quarterly filing periods, in each period of those four which begins after that total of $500 has been received;

(C) makes an expenditure of $250 or more, except for the personal travel expenses of the lobbyist, for lobbying during that period; or

(D) makes an expenditure of $500 or more for lobbying during a total of four consecutive quarterly filing periods, in each period of those four which begins after that total of $500 has been expended;

(11) "Commission" means the Federal Election Commission.

NOTICES OF REPRESENTATION

SEC. 3. Each lobbyist shall file a notice of representation with the Commission not later than fifteen days after

first becoming a lobbyist, and each lobbyist who has filed such a notice and has been inactive as a lobbyist for three consecutive quarterly filing periods shall also file a notice of representation when that lobbyist again becomes a lobbyist. The notice of representation shall be in such form and contain such information as the Commission shall prescribe, including—

(1) an identification of the lobbyist;

(2) an identification, so far as possible, of each person on whose behalf the lobbyist expects to perform services as a lobbyist;

(3) a description of the financial terms and conditions on which any lobbyist who is an individual is retained by any person, and the identification of that person;

(4) each aspect of the policymaking process which the lobbyist expects to seek to influence, including any Government agency, committee, or Federal officer or employee, with which contact is to be made, the form of communication used, and whether for or against a particular measure;

(5) an identification of each person who, as of the date of filing, is expected to be acting for such lobbyist and to be engaged in lobbying including—

(A) any financial terms or conditions of such person's so acting; and

(B) the aspects of the policymaking process such person is expected to work at influencing; and

(6) in the case of a voluntary membership organization, the approximate number of members and a description of the methods by which the decision to engage in lobbying is made.

RECORDS

SEC. 4. Each lobbyist shall maintain for not less than two years after the date of recording records which shall be available to the Commission for inspection and which contain the following information:

(1) The total income received by the lobbyist, and the amount of such income attributable to lobbying.

(2) The identification of each person from whom income is received and the amount received, but in the case of a voluntary membership organization a contribution during any quarterly filing period from a member need be recorded only if the contributions to such organization from such member are more than $100 during that quarterly filing period, or during that quarterly filing period combined with the three immediately preceding such periods.

(3) The total expenditures of such lobbyist for lobbying, itemizing any expenditure made—

(A) to employ lobbyists (and the amount received by each lobbyist so employed) ; and

(B) for research, advertising, staff, offices, travels, mailings, and publications.

(4) Each expenditure made directly or indirectly to or for any Federal officer or employee.

REPORTS

SEC. 5. Each lobbyist shall not later than fifteen days after the last day of a quarterly filing period file a report with the Commission covering that lobbyist's activities during that quarterly filing period. Each such report shall be in such form and contain such information as the Commission shall prescribe, including—

(1) an identification of the reporting lobbyist;

(2) an identification of each person on whose behalf the reporting lobbyist performed services as a lobbyist during the covered period, but not including any member of any voluntary membership organization on whose behalf the lobbyist performed such services, if the member contributed not more than $100 to the organization during the covered period or during that period combined with the three immediately preceding quarterly filing periods;

(3) an identification of each person who acted as

a lobbyist on behalf of the reporting lobbyist during the covered period;

(4) each decision of the policymaking process the reporting lobbyist sought to influence during the covered period, including bill numbers where relevant;

(5) an identification of each Federal officer or employee with whom the reporting lobbyist communicated during the covered period in order to influence the policymaking process;

(6) a copy of any written communication used by the reporting lobbyist during the covered period to solicit other persons to lobby, and an estimate of the number of persons to whom such written communication was made; and

(7) copies of the records required to be kept by the reporting lobbyist under section 4, to the extent such records pertain to the covered period.

EFFECT OF FILING ON CERTAIN DETERMINATIONS UNDER THE INTERNAL REVENUE CODE OF 1954

SEC. 6. Compliance with the filing requirements of this Act shall not be taken into consideration in determining, for purposes of the Internal Revenue Code of 1954, whether a substantial part of the activities of an organization is carrying on propaganda, or otherwise attempting, to influence legislation.

RECORDS OF OUTSIDE CONTACTS

SEC. 7. (a) All officials and employees of the executive branch in grades GS–15 or above in the General Schedule, or in any of the executive levels under title 5 of the United States Code, or who are designated by any person to whom this subsection otherwise applies as being responsible for making or recommending decisions affecting the policymaking process in the executive branch, shall prepare a record of each oral or written communication received directly or by referral from outside parties expressing an opinion or containing information with respect to such process. The records shall be in such form and contain such information as the Commission shall prescribe, including—

(1) the name and position of the official or employee who received the communication;

(2) the date upon which the communication was received;

(3) an identification, so far as possible, of the person from whom the communication was received and of the person on whose behalf such person was acting in making the communication;

(4) a brief summary of the subject matter or matters of the communication, including relevant docket numbers if known;

(5) in the case of communications through letters,

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documents, briefs, and other written material, copies of such material in its original form; and

(6) a brief description, when applicable, of any action taken by the official or employee in response to the communication.

(b) Each agency in the executive branch shall assure that records prepared pursuant to subsection (a) of this section shall be placed, within two working days of the date when such communication was received, in the case file of the rulemaking or adjudication to which the communication related. If the communication related to matters for which there was no such case file, the records of such communication shall be placed in a public file which shall be maintained in the same location as the case files.

(c) Each agency in the executive branch shall assure that records filed pursuant to subsection (b) of this section shall be made available for public inspection in a convenient location within the agency. A comprehensive index of such records by subject matter and, when applicable, docket number shall be maintained and made available for public inspection in such location.

POWERS OF COMMISSION

SEC. 8. (a) The Commission has the power for the purposes of this Act—

(1) to require, by special or general orders, any

person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpena, signed by the Chairman or the Vice Chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to initiate (through civil proceedings for injunctive relief and through presentation to Federal grand juries), prosecute, defend, or appeal any civil or criminal action in the name of the Commission for the purpose of enforcing the provisions of the Act through its General Counsel;

(6) to delegate any of its functions or powers, other than the power to issue subpenas under paragraph

(3), to any officer or employee of the Commission; and

(7) to make, amend, and repeal such rules as are necessary to carry out the provisions of this Act.

(b) Any United States district court within the jurisdiction of which any inquiry is carried on may, upon petition by the Commission, in case of refusal to obey a subpena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Notwithstanding any other provision of law, the Commission shall be the primary civil and criminal enforcement agency for violations of the provisions of this Act. Any violations of any such provision shall be prosecuted by the Attorney General or Department of Justice personnel only after consultation with, and with the consent of, the Commission.

DUTIES OF THE COMMISSION

SEC. 9. It shall be the duty of the Commission—

(1) to develop forms for the filing of notices of representation, and reports pursuant to sections 3 and 5 of this Act and to furnish such forms to lobbyists upon request;

(2) to develop forms for the filing of records of outside contacts under section 7;

(3) to prepare a manual setting forth recommended uniform methods of bookkeeping and reporting and to furnish such manual to lobbyists upon request;

(4) to develop a filing, coding, and cross-indexing system consonant with the purpose of this Act;

(5) to make the notices of representation and reports filed with it available for public inspection and copying, commencing as soon as practicable but not later than the end of the second day following the day during which it was received, and to permit copying of any such report or statement by hand or by duplicating machine, as requested by any person, at the expense of such person, provided that the charge does not exceed actual marginal cost, but no information copied from such reports and statements shall be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(6) to preserve the originals or copies of such notices and reports for a period of ten years from date of receipt;

(7) to compile and summarize, with respect to each filing period, the information contained in such notices, and reports in a manner reflective of the disclosure intent of this Act and in specific relation to—

(A) the lobbying activities and expenditures

pertaining to specific legislative or executive actions, including the identity of the lobbyists involved and of the persons in whose behalf they are acting; and

(B) the lobbying activities and expenditures of persons who share an economic, business, or professional interest in the legislative or executive actions which they have sought to influence;

(8) to have such information, as so compiled and summarized, published in the Federal Register within fifteen days after the close of each filing period;

(9) to have each notice of representation which is filed by any lobbyist published in the Federal Register within three days after each such notice was received by the Commission;

(10) to ascertain whether any lobbyist has failed to comply fully and accurately with the disclosure requirements of this Act and promptly notify such person to file such notices and reports as are necessary to satisfy the requirements of this Act or regulations prescribed by the Commission under this Act;

(11) to make audits and field investigations with respect to the notices, and reports filed under the provisions of this Act, and with respect to alleged failures to file any statement or reports required under the pro-

visions of this Act, and, upon complaint by any individual, with respect to alleged violations of any part of this Act;

(12) to prepare a special study or report upon the request of any Member of the House of Representatives or the Senate from information in the records of the Commission; or, if such records do not contain the necessary information, but the information would fall under the scope of information required by this Act, the Commission may inspect the records of the appropriate parties and prepare the report, but only if such special inspection can be completed in a reasonable time before the information would normally be filed;

(13) to prepare and publish such other reports as it may deem appropriate;

(14) to prescribe suitable rules and regulations to carry out the provisions of this Act; and

(15) to recommend legislation to carry out the purposes of this Act.

SANCTIONS

SEC. 10. (a) Any lobbyist who knowingly and willfully violates section 3 of this Act shall be fined not more than $5,000 or imprisoned for not more than two years.

(b) Any person who knowingly and willfully falsifies all or part of any notice of representation or report which he files with the Commission under this Act shall be fined

not more than $5,000 or imprisoned for not more than two years, or both.

(c) Any person who knowingly and willfully falsifies or forges all or part of any communication to influence legislative or executive action shall be fined not more than $5,000 or imprisoned for not more than two years, or both.

(d) Any Federal officer or employee of the executive branch to whom section 7 applies who knowingly and willfully falsifies, forges, or fails to file any record as required by such section shall be fined not more than $5,000, or imprisoned not more than two years, or both.

REPEAL OF FEDERAL REGULATION OF LOBBYING ACT

SEC. 11. The Federal Regulation of Lobbying Act (60 Stat. 839-842; 2 U.S.C. 261 et seq.) and that part of the table of contents of the Legislative Reorganization Act of 1946 which pertains to title III, also known as the Federal Regulation of Lobbying Act (60 Stat. 813), are repealed, effective on the date on which the regulations to carry out this Act first become effective.

EFFECTIVE DATE

SEC. 12. The provisions of this Act shall take effect upon the date of its enactment, except that any person required by section 5(a) to maintain records shall not have any duties or obligations under this Act to maintain such records until the date on which the regulations to carry out this Act first becomes effective.

94TH CONGRESS
1ST SESSION

S. 815

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 21), 1975

Mr. STAFFORD (for himself, Mr. BROCK, Mr. CLARK, Mr. KENNEDY, Mr. PERCY, and Mr. RIBICOFF) introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

To provide for the public disclosure of lobbying activities with respect to Congress and the executive branch, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Open Government Act of 1975".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds—

(1) that the enhancement of responsible representative government requires that the fullest opportunity be afforded to the people of the United States to petition their government for a redress of grievances and to

express freely to Federal officers and employees in Congress and the executive branch their opinion on pending legislative and executive actions and other policy issues;

(2) that, to promote legislative and executive actions in the public interest, the facts and opinions expressed to Congress and the executive branch by the advocates of one view or interest should be balanced against the facts and opinions of advocates with other views or interests, and all such facts and opinions should be available to officials in both branches of government; and

(3) that the identity and activities of persons who engage in efforts to persuade Congress or the executive branch to take specific legislative or executive actions, either by direct communication or by solicitation or employment of others to engage in such efforts, should be publicly and timely disclosed.

(b) It is the purpose of this Act, in order to enable Federal officers and employees to better evaluate the efforts of those who advocate certain congressional or executive branch actions and to protect the interests of such advocates and the general public, to provide for the disclosure of the activities, and the origin, amount, and utilization of funds and

other resources, of and by persons who seek to influence the legislative or executive process.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(a) "person" includes an individual, corporation, company, association, firm, partnership, society, joint stock company, or other organization;

(b) "policymaking process" means any action taken by a Federal officer or employee with respect to any pending or proposed bill, resolution, amendment, nomination, hearing, investigation, or other action in Congress, or with respect to any pending or proposed rule, adjudication, hearing, investigation, or other action in the executive branch;

(c) "Federal officer or employee" means any officer or employee in the legislative or executive branch of the Federal Government, and includes a Member of Congress, Delegate to Congress, or the Resident Commissioner from the Commonwealth of Puerto Rico;

(d) "income" means—

(1) a gift, donation, contribution, payment, loan, advance, service, or other thing of value received; or

(2) a contract, promise, or agreement, whether or not legally enforceable, to receive any item referred to in paragraph (1);

(e) "expenditure" means—

(1) a gift, donation, contribution, purchase, payment, distribution, loan, advance, service, or other thing of value made, disbursed, or furnished; or

(2) a contract, promise, or agreement, whether or not legally enforceable, to carry out any transaction referred to in paragraph (1);

(f) "quarterly filing period" means the period covered by a calendar quarter;

(g) "voluntary membership organization" means an organization composed of individuals who are members thereof on a voluntary basis and who, as a condition of membership, are required to make regular payments to the organization;

(h) "identification" means, in the case of an individual, the name of the individual and his address, occupation, principal place of business, and position held in the business; and, in the case of a person other than an individual, the name of the person and its address, principal place of business, officers, and board of directors, if any;

(i) "lobbying" means a communication, or the solicitation or employment of another to make a communiciation, with a Federal officer or employee in order

to influence the policymaking process, but does not include—

(1) testimony before a congressional committee, subcommittee, or joint committee, or before a Federal department or agency, or the submission of a written statement thereto, if such testimony or statement is made a matter of public record by the committee, subcommittee, department, or agency;

(2) a communication or solicitation by a Federal officer or employee, or by an officer or employee of a State or local government, acting in his official capacity;

(3) a communication or solicitation, other than a publication of a voluntary membership organization, made through the distribution in the normal course of business of any news, editorial view, letter to an editor, advertising, or like matter by—

(A) a newspaper, magazine, or other periodical distribution to the general public;

(B) a radio or television broadcast; or

(C) a book published for the general public;

(4) a communication or solicitation by a candidate, as defined in section 591 (b) of title 18, United

States Code, made in the course of a campaign for Federal office; or

(5) a communication or solicitation by or authorized by—

(A) a national political party of the United States or a National, State, or local committee or other organizational unit of a national political party regarding its activities, undertakings, policies, statements, programs, or platforms; or

(B) a political party of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or a committee or other organizational unit of such political party, regarding its activities, undertakings, policies, statements, programs, or platforms.

(j) "lobbyist" means any person who engages in lobbying and who—

(1) receives income of $250 or more as compensation for employment or other activity during a quarterly filing period, or of $500 or more as compensation for employment or other activity during four consecutive quarterly filing periods, when lobbying is a substantial purpose of such employment or activity;

(2) makes an expenditure for lobbying, except for the personal travel and lodging expenses of such person, of $250 or more during a quarterly filing period, or of $500 or more during four consecutive quarterly filing periods; or

(3) in the course of lobbying during a quarterly filing period, communicates orally on eight or more separate occasions with one or more Federal officers or employees;

(k) "Commission" means the Federal Election Commission.

NOTICES OF REPRESENTATION

SEC. 4. (a) Each lobbyist shall file a notice of representation with the Commission not later than fifteen days after becoming a lobbyist. The notice of representation shall be in such form and contain such information as the Commission shall prescribe, including—

(1) an identification of the lobbyist;

(2) an identification, so far as practicable, of each person on whose behalf the lobbyist expects to perform services as a lobbyist;

(3) a description of the financial terms and conditions, including contingent fee arrangements or other conditions, under which the lobbyist is employed or re-

tained by any person, and the identification of that person;

(4) each aspect of the policymaking process which the lobbyist expects to seek to influence, including any committee, department, or agency, or any Federal officer or employee, to whom a communication is to be made, the form of communication to be used, and whether the communication is to be for or against a particular measure or action;

(5) an identification of each person who, as of the date of filing, is expected to be acting for such lobbyist and to be engaged in lobbying, including—

(A) the financial terms or conditions of such person's activity; and

(B) each aspect of the policymaking process such person expects to seek to influence; and

(6) in the case of a voluntary membership organization, the approximate number of members and a description of the methods by which the decision to engage in lobbying is made.

(b) Each notice of representation filed by a lobbyist under subsection (a) of this section shall be amended by the lobbyist at such interval of time as the Commission shall prescribe to reflect the current activities of the lobbyist.

(c) A lobbyist who has filed a notice of representation under the subsection (a) of this section and who has not been a lobbyist for three consecutive quarterly filing periods shall file a notice of representation when he again becomes a lobbyist.

RECORDS

SEC. 5. Each lobbyist shall maintain such financial and other records of lobbying activity as the Commission shall prescribe. Such records shall be preserved for a period of not less than two years after the date of the activity. Such records shall be available to the Commission for inspection and shall include the following information:

(a) the total income received by the lobbyist, and the amount of such income attributable to lobbying;

(b) the identification of each person from whom income for lobbying is received and the amount received: *Provided, however,* That in the case of a voluntary membership organization, a contribution received during any quarterly filing period from a member need be recorded only if the contributions to such organization from such member are more than $100 during that quarterly filing period, or during that quarterly filing period combined with the three immediately preceding such periods;

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(c) the expenditures of the lobbyist, including—

(1) the total expenditures of the lobbyist, and the amount of such expenditures attributed to lobbying;

(2) an itemization of any expenditure for lobbying which exceeds $10 in amount or value, including the identification of the person to or for whom the expenditure is made, the date of the expenditure, and a description of the nature of the expenditure;

(3) expenditures to employ any person who engages in lobbying on behalf of such lobbyist, and the amount received by each person so employed; and

(4) expenditures relating to research, advertising, staff, entertainment, offices, travel, mailings, and publications used in lobbying;

(d) such other information as the Commission shall prescribe to carry out the purpose of this Act.

REPORTS

SEC. 6. Each lobbyist shall, not later than fifteen days after the last day of a quarterly filing period in which such lobbyist engaged in lobbying, file a report with the Commission covering the lobbyist's activities during that period.

Each report shall be in such form and contain such information as the Commission shall prescribe, including—

(a) an identification of the lobbyist;

(b) an identification of each person on whose behalf the lobbyist performed services as a lobbyist during the period, but not including any member of any voluntary membership organization on whose behalf the lobbyist performed such services, if the member contributed not more than $100 to the organization during the period, or during that period combined with the three immediately preceding quarterly filing periods;

(c) each aspect of the policymaking process the lobbyist sought to influence during the period, including bill, docket, or other identifying numbers where relevant;

(d) an identification of each Federal officer or employee with whom the lobbyist communicated during the period to influence the policymaking process;

(e) an identification of the subject matter of each oral or written communication which expresses an opinion or contains information with respect to the policymaking process made by the lobbyist to any Federal officer or employee, or to any committee, department, or agency.

(f) an identification of each person, including other lobbyists, who engaged in lobbying on behalf of the reporting lobbyist during the filing period, including—

(1) each decision of the policymaking process such person sought to influence, including bill, docket, or other identifying numbers where relevant; and

(2) each Federal officer or employee with whom such person communicated in order to influence the policymaking process;

(g) a copy of any written communication used by the lobbyist during the period to solicit other persons to lobby, an estimate of the number of such persons to whom such written communication was made, and an estimate of the number of such persons who engaged in lobbying;

(h) a description of the procedures, other than written communications, used by the lobbyist during the period to solicit other persons to lobby, an estimate of the number of such persons solicited, an estimate of the number of such persons who engaged in lobbying, the specific purpose of the lobbying, and the Federal officers or employees to be contacted;

(i) any expenditure made directly or indirectly to or for any Federal officer or employee which exceeds $25 in amount or value, and any expenditures made directly or indirectly to or for one or more such officers or employees which, in aggregate amount or value,

exceed $100 in a calendar year, including an identification of the person or persons making or receiving such expenditure or expenditures and a description of the expenditure or expenditures;

(j) copies of the records required to be kept by the lobbyist under section 5, to the extent such records pertain to the period; and

(k) such other information as the Commission may by regulation prescribe to carry out the purpose of this Act.

EFFECT OF FILING ON CERTAIN DETERMINATIONS UNDER THE INTERNAL REVENUE CODE OF 1954

SEC. 7. Compliance with the requirements of section 4, 5, or 6 of this Act shall not be taken into consideration in determining, for purposes of the Internal Revenue Code of 1954, whether a substantial part of the activities of an organization is carrying on propaganda or otherwise attempting to influence legislation.

POWERS OF COMMISSION

SEC. 8. (a) The Commission has the power for the purposes of this Act—

(1) to require, by special or general orders, any person to submit in writing such reports, records, and answers to questions as the Commission may prescribe relating to the execution of its duties; and such submis-

sion shall be made within such a reasonable period of time and under oath or otherwise as the Commission may determine;

(2) to administer oaths or affirmations;

(3) to require by subpena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to initiate (through civil proceedings for injunctive, declaratory, or other appropriate relief), defend, or appeal any civil action in the name of the Commission for the purpose of enforcing the provisions of this Act, through its general counsel;

(7) to make, amend, and repeal such rules, pursuant to the provisions of chapter 5 of title 5, United States

Code, as are necessary to carry out the provisions of this Act;

(8) to formulate general policy with respect to the administration of this Act;

(9) to develop and prescribe forms under sections 4, 5, and 6 of this Act;

(10) to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities;

(11) to modify the requirements of sections 4, 5, and 6 in specific cases where such requirements, due to extenuating or unusual circumstances, are overly burdensome for the lobbyist involved or unnecessary for the full disclosure of lobbying activities, provided such modifications are consistent with the disclosure intent of this Act.

(b) Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission, in case of refusal to obey a subpena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(d) (1) Whenever the Commission submits any budget estimate or request to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation, requested by the Congress or by any Member of the Congress, to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress or to the Member requesting the same. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

DUTIES OF THE COMMISSION

SEC. 9. It shall be the duty of the Commission—

(a) to develop forms for the filing of notices of representation, records, and reports pursuant to sections 4, 5, and 6 of this Act and to furnish such forms to lobbyists upon request;

(b) to prepare a manual setting forth recommended uniform methods of bookkeeping and reporting and to furnish such manual to lobbyists upon request;

(c) to develop a filing, coding, and cross-indexing system to carry out the purpose of this Act;

(d) to make the notices of representation and reports filed with it available for public inspection and copying, commencing as soon as practicable, but not later than the end of the second day following the day on which it was received, and to permit copying of any such report or statement by hand or by duplicating machine, as requested by any person, at the expense of such person, provided that the charge does not exceed actual marginal costs, but no information copied from such reports and statements shall be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(e) to preserve the originals or copies of such notices and reports for a period of ten years from date of receipt;

(f) to compile and summarize, with respect to each filing period, the information contained in such notices and reports in a manner which facilititates the disclosure of lobbying activities, including, but not limited to, information on—

(1) the lobbying activities and expenditures pertaining to specific legislative or executive actions, including an identification of the lobbyists involved,

an identification of the persons in whose behalf the lobbyists acted, and the amount of income received by the lobbyist from such persons; and

(2) the lobbying activities and expenditures of persons who share an economic, business, or other common interest in the legislative or executive actions which they have sought to influence;

(g) to have such information, as so compiled and summarized, published in the Federal Register within fifteen days after the close of each filing period;

(h) to have each notice of representation which is filed by any lobbyist published in the Federal Register within three days after each such notice is received by the Commission;

(i) to have a description and explanation of each modification of general applicability under consideration pursuant to section 8(a)(11) of this Act published in the Federal Register for public comment at least ten days in advance of granting such modification;

(j) to ascertain whether any lobbyist has failed to comply fully and accurately with the disclosure requirements of this Act and promptly notify such person to file such notices and reports as are necessary to satisfy the requirements of this Act or regulations prescribed by the Commission under this Act;

(k) to make audits and field investigations with respect to the notices and reports filed under the provisions of this Act, and with respect to alleged failures to file any notice or report required under the provisions of this Act, and, upon complaint by any individual, with respect to alleged violations of any part of this Act; and

(l) to prescribe suitable rules and regulations to carry out the provisions of this Act.

ADVISORY OPINIONS

SEC. 10. (a) Upon written request to the Commission by any person, the Commission shall render an advisory opinion, in writing, within a reasonaable time with respect to whether any specific transaction or activity by such person is covered by the provisions of this Act.

(b) Notwithstanding any other provision of law, any person with respect to whom an advisory opinion is rendered under subsection (a) who acts in good faith in accordance with the provisions and findings of such advisory opinions shall be presumed to be in compliance with the provisions of this Act.

(c) Any request made under subsection (a) shall be made public by the Commission. The Commission shall, before rendering an advisory opinion with respect to such request, provide any interested person with an opportunity to transmit written comments to the Commission with respect to such request.

ENFORCEMENT

SEC. 11. (a) (1) Any person who believes a violation of this Act has occurred may file a complaint with the Commission.

(2) The Commission, upon receiving any complaint under paragraph (1), or if it has reason to believe that any person has committed a violation of this Act, shall notify the person involved of such apparent violation and shall—

(A) report such apparent violation to the Attorney General; or

(B) make an investigation of such apparent violation.

(3) Any investigation under paragraph (2) (B) shall be conducted expeditiously. Any notification or investigation made under paragraph (2) shall not be made public by the Commission or by any other person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

(4) The Commission shall, at the request of any person who receives notice of an apparent violation under paragraph (2), conduct a hearing with respect to such apparent violation.

(5) If the Commission determines, after investigation, that there is reason to believe that any person has engaged, or is about to engage in any acts or practices which constitute

or will constitute a violation of this Act, it may endeavor to correct such violation by informal methods of conference, conciliation, and persuasion. If the Commission fails to correct the violation through informal methods, it may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, the court shall grant a permanent or temporary injunction, restraining order, or other order.

(6) The Commission shall refer apparent violations to the appropriate law enforcement authorities to the extent that violations of this Act are involved, or if the Commission is unable to correct apparent violations of this Act under the authority given it by paragraph (5), or if the Commission determines that any such referral is appropriate.

(7) Whenever in the judgment of the Commission, after affording due notice and an opportunity for a hearing, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, upon request by the Commission, the Attorney General on behalf of the United States shall institute a civil action for relief, including a permanent

or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which such person is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted by such court.

(8) In any action brought under paragraph (5) or (7) of this subsection, subpenas for witnesses who are required to attend a United States district court may run into any other district.

(9) Any party aggrieved by an order granted under paragraph (5) or (7) of this subsection may, at any time within sixty days after the date of entry thereof, file a petition with the United States court of appeals for the circuit in which such order was issued for judicial review of such order.

(10) The judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(11) Any action brought under this subsection shall be advanced on the docket of the court in which filed, and put

ahead of all other actions (other than other actions brought under this subsection or under section 12 of this Act).

(b) In any case in which the Commission refers an apparent violation to the Attorney General, the Attorney General shall respond by report to the Commission with respect to any action taken by the Attorney General regarding such apparent violation. Each report shall be transmitted no later than sixty days after the date the Commission refers any apparent violation, and at the close of every thirty-day period thereafter, until there is final disposition of such apparent violation. The Commission may from time to time prepare and publish reports on the status of such referrals.

JUDICIAL REVIEW

SEC. 12. (a) The Commission, or any person who seeks to engage in lobbying as defined in this Act, may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act.

(b) It shall be the duty of the district courts, the courts of appeals, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any action instituted under this section.

SANCTIONS

SEC. 13. (a) Any lobbyist who fails to comply with section 4, 5, or 6 of this Act shall be fined not more than $1,000 and be required to fully comply, retroactively or otherwise, with such sections.

(b) Any lobbyist who knowingly and willfully violates section 4, 5, or 6 of this Act shall be fined not more than $10,000 or imprisoned for not more than two years.

(c) Any person who knowingly and willfully falsifies all or part of any notice of representation or report which he files with the Commission under this Act shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

REPORTS

SEC. 14. The Commission shall transmit reports to the President of the United States and to each House of the Congress no later than March 31 of each year. Each such report shall contain a detailed statement with respect to the activities of the Commission in carrying out its duties under this title, together with recommendations for such legislative or other action as the Commission considers appropriate.

REPEAL OF FEDERAL REGULATIONS OF LOBBYING ACT

SEC. 15. The Federal Regulation of Lobbying Act (60 Stat. 839–842; 2 U.S.C. 261 et seq.) and that part of the table of contents of the Legislative Reorganization Act of

1946 which pertains to title III, also known as the Federal Regulation of Lobbying Act (60 Stat. 813), are repealed, effective on the date on which the regulations to carry out this Act first become effective.

PARTIAL INVALIDITY

SEC. 16. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 17. The provisions of this Act shall take effect upon the date of its enactment, except that any lobbyist shall not have any duties or obligations under this Act to maintain records pursuant to section 5 until the date on which the regulations to carry out this Act become effective.

94TH CONGRESS
1ST SESSION

S. 2068

IN THE SENATE OF THE UNITED STATES

JULY 9 (legislative day, JULY 7), 1975

MR. METCALF introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

To provide for public disclosure of lobbying activities to influence decisions in the Congress and the executive branch, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Lobbying Disclosure Act of 1975".

TITLE I—DISCLOSURE OF LOBBYING ACTIVITIES

DEFINITIONS

SEC. 101. As used in this title, the term—

(a) "person" includes an individual, corporation, company, association, firm, partnership, society, or any other organization or group of persons;

(b) "decision" means any action taken by a Federal officer or employee with respect to any pending or proposed bill, resolution, amendment, nomination, hearing, investigation, or other action in Congress, or with respect to any pending or proposed rule, adjudication, hearing, investigation, or other action in any Federal agency;

(c) "Federal agency" means an executive agency (as defined in section 105 of title 5, United States Code), the United States Postal Service, the Postal Rate Commission, and Government-controlled corporations now in existence or which may be created in the future, the Executive Office of the President, and any regulatory agency of the Government which is not otherwise an executive agency;

(d) "Federal officer or employee" means an officer or employee of any Federal agency, of the Senate or the House of Representatives, or of any agency in the legislative branch, and includes a Member of, or Delegate to, the Congress, and the Resident Commissioner from Puerto Rico;

(e) "income" means—

(1) a salary, gift, donation, contribution, payment, fee, loan, advance, service, or other thing of value received; and

(2) except for purposes of applying sections

103 and 104, a contract, promise, or agreement, whether or not legally enforceable, to receive any item referred to in paragraph (1);

(f) "expenditure" means—

(1) a salary, gift, donation, contribution, purchase, payment, fee, distribution, loan, advance, service, or other thing of value made, disbursed, or furnished; and

(2) except for purposes of applying sections 103 and 104, a contract, promise, or agreement, whether or not legally enforceable, to carry out any transaction referred to in paragraph (1);

(g) "congressional committee" means a standing, select, or special committee of the Senate or the House of Representatives, a joint committee of the Congress, and a duly authorized subcommittee of any such committee or joint committee;

(h) "voluntary membership organization" means an organization composed of persons who are members thereof on a voluntary basis and who, as a condition of membership, are required to make regular payments to the organization;

(i) "identification" means, in the case of an individual, the name of the individual and his address, occupation, principal place of business, and position

held in the business, and, in the case of a person other than an individual, the name of the person and its address, principal place of business, officers, and board of directors;

(j) "lobbying" means a communication to, or the employment or solicitation of another to make a communication to, a Federal officer or employee in order to influence a decision of that officer or employee, but does not include—

(1) a communication by an individual, acting solely on his own behalf, for redress of his grievance or to express his own opinion;

(2) a communication to a congressional committee in an open hearing or which becomes a part of the record of any such hearing;

(3) a communication to the Congress or either House thereof, a Member of, or Delegate to, the Congress, the Resident Commissioner from Puerto Rico, or an officer of the Senate or the House of Representatives, made at the specific request of the body or individual to whom such communication is made;

(4) a written communication to an officer or employee of a Federal agency which becomes part of the record upon which a decision is made;

(5) a communication to a Federal agency made at the specific request of such agency, or in the exercise of a right of petition granted by section 553(c) of title 5, United States Code;

(6) a communication or solicitation by a Federal officer or employee acting in his official capacity or by an officer or employee of a State or local government acting in his official capacity;

(7) a communication or solicitation made in the normal course of business by—

(A) a newspaper, magazine, or other periodical available to the general public in the form of news, editorial views, advertising, letters to the editor, or like matter;

(B) a radio or television broadcast station in the form of news, editorial views, advertising, editorial response, or like matter; or

(C) a publisher or author in a book published for the general public;

(8) a communication or solicitation by or authorized by a candidate (as defined in section 591(b) of title 18, United States Code) made in the course of a campaign for Federal office;

(9) a communication or solicitation by or authorized by—

(A) a national political party or a National, State, or local committee or other organizational unit of a national political party regarding its activities, policies, statements, programs, or platforms;

(B) a political party of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or a committee or other organizational unit of such a political party, regarding its activities, policies, statements, programs, or platforms; or

(C) a candidate for political office of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or a committee or other organizational unit acting on behalf of such candidate, regarding the activities, policies, statements, programs, or platforms of such candidate;

(10) a communication by an attorney of record on behalf of any person made in connection with any criminal investigation or prosecution of such person; or

(11) a communication which relates only to the status, purpose, or effect of a decision;

(k) "lobbyist" means, with respect to a quarterly filing period, a person—

(1) whose income from lobbying during such period is $250 or more, or whose income from lobbying during such period, when added to his income from lobbying during the three preceding quarterly filing periods, is $500 or more, or

(2) whose expenditures for the solicitation or employment of another person to engage in lobbying during such period are $250 or more, or whose expenditures for the solicitation or employment of another person to engage in lobbying during such period, when added to such expenditures during the three preceding quarterly filing periods, are $500 or more, except that exempt travel expenses shall not be taken into account;

(l) "Commission" means the Federal Lobbying Disclosure Commission established by section 201 of this Act;

(m) "influence" means to attempt to institute, promote, effectuate, delay, alter, amend, withdraw from consideration, or oppose any decision by a Federal officer or employee;

(n) "exempt travel expenses" means any payment or reimbursement of expenses for travel solely from one point in the United States, or its territories or possessions, to another point in the United States, or its territories or possessions, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus a per diem allowance for other expenses in an amount not in excess of the maximum applicable allowance payable under section 5702 (a) of title 5, United States Code, for Government employees;

(o) "quarterly filing period" means a calendar quarter; and

(p) "solicitation" means to urge, request, or require another person to make a communication to any Federal officer or employee to influence, in a specified manner, a specific decision by such officer or employee.

NOTICES OF REPRESENTATION

SEC. 102. (a) Each person who is a lobbyist on the effective date of this section shall file a notice of representation with the Commission not later than five days after such date. Each person who becomes a lobbyist after such date shall file a notice of representation with the Commission not later than five days after he becomes a lobbyist.

(b) Each notice of representation shall be in such form

and detail as the Commission shall prescribe by regulations and shall include, but not be limited to, the following information:

(1) an identification of the lobbyist;

(2) the financial terms and conditions under which the lobbyist is employed or retained by any person for lobbying, and an identification of that person;

(3) insofar as practicable, a description of each decision with respect to which the lobbyist is engaged, or is to engage, in lobbying; and

(4) in the case of a voluntary membership organization—

(A) the approximate number of individuals who are members of the organization, and

(B) the name and address of each person, other than an individual, who is a member of the organization.

Nothing contained in this subsection shall be construed to required the disclosure of the individual members of or the organizational dues structure of a voluntary membership organization.

(c) If, at any time, the information contained in a notice of representation filed by a lobbyist is not completely accurate and current in all respects because of any change in circumstances or conditions with respect to such lobbyist

(including termination of his status as a lobbyist), such lobbyist shall file with the Commission, within five days after such change has occurred, such amendment or amendments to such notice as may be necessary to make the information contained in such notice completely accurate and current in all respects.

(d) Each lobbyist, subsequent to filing a notice of representation, shall include in any written communication in which the lobbyist is engaged in lobbying the following statement: "Notice of representation is on file with and available from the Federal Lobbying Disclosure Commission.".

RECORDS

SEC. 103. Each lobbyist shall maintain records, for each quarterly filing period, in accordance with generally accepted accounting principles and standards and with regulations prescribed by the Commission. The records for each quarterly filing period shall—

(1) be preserved for a period of not less than two years after the close of the period;

(2) be available to the Commission for inspection; and

(3) include, but not be limited to, the following information:

(A) the total income from lobbying, or to be

used for lobbying, received by the lobbyist during the period;

(B) an identification of each person from whom income from lobbying, or to be used for lobbying, is received during the period, and the amount received from each such person; and

(C) the total expenditures of the lobbyist incurred in or for lobbying and paid during the period, including but not limited to an itemization of any expenditure of at least $50 for—

(i) employment of lobbyists (and the amount paid to each such lobbyist) ;

(ii) solicitation (including amounts expended for travel and lodging, advertising, addressing, postage and mailings, telephone and telegraph, and publications attributable to solicitation) ; and

(iii) research, staff, office space, entertainment, travel, telephone and telegraph, postage and mailings, and publications, which are not attributable to solicitation.

REPORTS

SEC. 104. (a) Each lobbyist shall, not later than fifteen days after the last day of each quarterly filing period, file a report with the Commission concerning his activities during

that period. Each such report shall be in such form and detail as the Commission shall prescribe by regulations and shall include, but not be limited to, the following information:

(1) an identification of the lobbyist;

(2) an identification of each person by whom the lobbyist is employed or retained for lobbying;

(3) a description of each decision on which the lobbyist engaged in lobbying during the period;

(4) all of the information contained in the records required to be maintained under section 103 for the period, except that—

(A) a lobbyist shall not be required to report the name and address of (or otherwise identify) any person from whom income from lobbying, or to be used for lobbying, of less than $100 is received during the period, but the report shall contain the number of such persons together with the aggregate of such income;

(B) in the case of a voluntary membership organization—

(i) the organization shall not be required to report the name and address of (or otherwise identify) any member whose payments during the period to the organization to be used for lobbying did not exceed 5 per centum

of the total expenditures of the organization in the period for lobbying,

(ii) the Commission shall waive the requirement that the organization report the name and address of (or otherwise identify) any member whose payments during the period to the organization to be used for lobbying exceeded 5 per centum of the total expenditures of the organization in the period for lobbying if the Commission determines that the waiver of such requirement will not impede the purpose of this Act, and

(iii) the organization shall report the number of members referred to in clause (i) and the number of members referred to in clause (ii), together with the aggregate of the amounts received from the members referred to in each clause; and

(C) if any item of income or expenditure is attributable in part to lobbying and in part to other purposes, such item may be reported, at the option of the lobbyist and in conformity with regulations prescribed by the Commission—

(i) by a reasonably accurate allocation which sets forth that portion of the item re-

ceived or expended for lobbying, and the basis on which the allocation is made, or

(ii) by showing the amount of the item together with a good faith estimate by such lobbyist of that part of the item reasonably allocable to lobbying.

(b) In determining—

(1) for purposes of subsection (a) (4) (A), whether a member of a voluntary membership organization is a person from whom income to be used for lobbying of at least $100 is received in any quarterly filing period, and

(2) for purposes of subsection (a) (4) (B), whether payments by such a member during any quarterly filing period exceed 5 per centum of the organization's total expenditures during the period for lobbying,

a member of a voluntary membership organization shall be treated as having paid to the organization during the period, to be used for lobbying, an amount which bears the same ratio to the total dues, subscriptions, or other sums paid by such member during the period to the organization as a condition of membership as the total expenditures during

the period by such organization for lobbying bears to the total expenditures during the period by such organization for all purposes.

EFFECT ON TAX STATUS

SEC. 105. An organization shall not be denied exemption under section 501 (a) of the Internal Revenue Code of 1954 as an organization described in section 501 (c) (3) of such Code, and shall not be denied status as an organization described in section 170 (c) (2) of such Code, solely because such organization complies with requirements of sections 102, 103, and 104.

CRIMINAL PENALTIES

SEC. 106. Any person required—

(1) to file a notice of representation under section 102,

(2) to keep records under section 103, or

(3) to make a report under section 104,

who knowingly and willfully fails to file such notice, keep such records, or make such report, or files a false notice, keeps false records, or makes a false report, shall, upon conviction therefor, be fined not more than $5,000 or imprisoned not more than 2 years, or both, for each such offense.

TITLE II—FEDERAL LOBBYING DISCLOSURE COMMISSION

ESTABLISHMENT OF COMMISSION

SEC. 201. (a) (1) There is established a commission to be known as the Federal Lobbying Disclosure Commission (hereafter in this title referred to as the "Commission"). The Commission shall be composed of the Secretary of the Senate and the Clerk of the House of Representatives, ex officio and without the right to vote, and six members appointed as follows:

(A) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President pro tempore of the Senate upon the recommendations of the majority leader of the Senate and the minority leader of the Senate;

(B) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the Speaker of the House of Representatives, upon the recommendations of the majority leader of the House and the minority leader of the House; and

(C) two shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President of the United States.

A member appointed under subparagraph (A), (B), or

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(C) shall not be affiliated with the same political party as the other member appointed under such subparagraph.

(2) Members of the Commission shall serve for terms of six years, except that of the members first appointed—

(A) one of the members appointed under paragraph (1) (A) shall be appointed for a term ending on the April 30 first occurring more than six months after the date on which he is appointed;

(B) one of the members appointed under paragraph (1) (B) shall be appointed for a term ending one year after the April 30 on which the term of the member referred to in subparagraph (A) of this paragraph ends;

(C) one of the members appointed under paragraph (1) (C) shall be appointed for a term ending two years thereafter;

(D) one of the members appointed under paragraph (1) (A) shall be appointed for a term ending three years thereafter;

(E) one of the members appointed under paragraph (1) (B) shall be appointed for a term ending four years thereafter; and

(F) one of the members appointed under paragraph (1) (C) shall be appointed for a term ending five years thereafter.

An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the membership of the Commission shall be filled in the same manner as in the case of the original appointment.

(3) Members shall be chosen on the basis of their maturity, experience, integrity, impartiality, and good judgment and shall be chosen from among individuals who, at the time of their appointment, are not elected or appointed officers or employees in the executive, legislative, or judicial branch of the Government of the United States.

(4) Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. 5315).

(5) The Commission shall elect a Chairman and a Vice Chairman from among its members (other than the Secretary of the Senate and the Clerk of the House of Representatives) for a term of one year. No member may serve as Chairman more often than once during any term of office to which he is appointed. The Chairman and the Vice Chairman shall not be affiliated with the same political party. The Vice Chairman shall act as Chairman in the absence

or disability of the Chairman, or in the event of a vacancy in such office.

(b) The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to this Act. The Commission has primary jurisdiction with respect to the civil enforcement of its provisions.

(c) All decisions of the Commission with respect to the exercise of its duties and powers under the provisions of this Act shall be made by a majority vote of the members of the Commission. A member of the Commission may not delegate to any person his vote or any decisionmaking authority or duty vested in the Commission by the provisions of this Act.

(d) The Commission shall meet at least once each month and also at the call of any member, and all such meetings shall be open to the public.

(e) The Commission shall prepare written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its principal office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).

(f) (1) The Commission shall have a staff director and a General Counsel who shall be appointed by the Commission. The staff director shall be paid at a rate not to exceed the rate of basic pay in effect for level IV of the Executive Schedule (5 U.S.C. 5315). The General Counsel shall be

paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. 5316). With the approval of the Commission, the staff director may appoint and fix the pay of such additional personnel as he considers desirable.

(2) With the approval of the Commission, the staff director may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–15 of the General Schedule (5 U.S.C. 5332).

(3) In carrying out its responsibilities under this Act, the Commission shall, to the fullest extent practicable, avail itself of the assistance, including personnel and facilities, of other agencies and departments of the United States Government. The heads of such agencies and departments may make available to the Commission such personnel, facilities, and other assistance, with or without reimbursement, as the Commission may request.

POWERS OF COMMISSION

SEC. 202. (a) The Commission has the power—

(1) to require, by special or general orders, any person to submit in writing such information and answers to questions as the Commission may prescribe;

and such submission shall be made within such a reasonable period of time and under oath or otherwise as the Commission may determine;

(2) to administer oaths or affirmations;

(3) to require by subpena, signed by the Chairman or the Vice Chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to initiate (through civil proceedings for injunctive, declaratory, or other appropriate relief), defend, or appeal any civil action in the name of the Commission for the purpose of enforcing the provisions of this Act, through its General Counsel;

(7) to render advisory opinions under section 203 (b);

(8) to make, amend, and repeal such regulations pursuant to provisions of chapter 5 of title 5, United States Code, as are necessary to carry out the provisions of this Act;

(9) to formulate general policy with respect to the administration of this Act;

(10) to develop prescribed forms for notices of representation and amendments thereto under section 102 and reports under section 104; and

(11) to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities.

(b) Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission, in case of refusal to obey a subpena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(d) (1) Whenever the Commission submits any budget

estimate or request to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation, requested by the Congress or by any Member of the Congress, to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress or to the Member requesting the same. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

DUTIES OF COMMISSION

SEC. 203. (a) The Commission shall transmit a report to the President and to each House of the Congress not later than January 20 of each year. Each such report shall contain a detailed statement with respect to the activities of the Commission in carrying out its duties under this Act, together with recommendations for such legislative or other action as the Commission considers appropriate.

(b) (1) Upon written request to the Commission by any person, the Commission shall render an advisory opinion, in writing, within a reasonable time with respect to—

(A) what specific action is required of such person to comply with the provisions of section 102, 103, or 104, or

(B) whether any specific action, or failure to act, by such person would constitute a violation of section 106.

(2) Notwithstanding any other provision of law, any person with respect to whom an advisory opinion is rendered under paragraph (1) who acts in good faith in accordance with the provisions and findings of such advisory opinion shall be presumed to be in compliance with the provisions of title I with respect to which such advisory opinion is rendered.

(3) Any request made under paragraph (1) shall be made public by the Commission. The Commission shall, before rendering an advisory opinion with respect to any such request, provide any interested party with an opportunity to transmit written comments to the Commission with respect to such request.

(c) Upon written request, the Commission shall furnish lobbyists with assistance in the development of appropriate accounting procedures and practices to meet the record-

keeping requirements of section 103 and the reporting requirements of section 104, and the Commission may permit and prescribe regulations for the joint filing of reports under section 104.

(d) In carrying out its duties under this Act, the Commission shall—

(1) develop and by regulations prescribe forms and standards for notices of representation and amendments thereto, required under section 102 and reports required under section 104;

(2) compile and summarize, in a manner reflective of the disclosure intent of this Act, information contained in such notices, amendments, and reports, with respect to each quarterly filing period, and transmit such information to Congress within forty-five days after the end of each such period or if Congress is not in session, then as soon as possible after Congress reconvenes;

(3) make available for public inspection and copying at reasonable times in the Commission office, for a period of two years following the date of filing, all such notices, amendments, and reports, and, at the request of any person, furnish a copy of any such notice, amendment, or report upon payment by such person of the actual cost of making and furnishing such copy, but no information contained in any such notice, amendment,

or report may be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(4) have each notice of representation and amendment thereto published in the Congressional Record within three days after such notice or amendment is received by the Commission, or if Congress is not in session when such notice is so received, then as soon as possible after Congress reconvenes; and

(5) ascertain whether any person required by section 104 to file a report has failed to file such report, or has filed an incomplete or inaccurate report, and promptly notify such person to file or amend such report.

ENFORCEMENT

SEC. 204. (a) (1) Any person who believes a violation of section 106 has occurred may file a complaint with the Commission.

(2) The Commission, upon receiving any complaint under paragraph (1), or if it has reason to believe that any person has committed a violation of section 106, shall notify the person involved of such apparent violation and shall—

(A) report such apparent violation to the Attorney General; or

(B) make an investigation of such apparent violation.

(3) The Commission shall, at the request of any person who receives notice of an apparent violation under paragraph (2), conduct a hearing with respect to such apparent violation.

(4) If the Commission determines, after investigation, that there is reason to believe that any person has engaged, or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, it may endeavor to correct such violation by informal methods of conference, conciliation, and persuasion. If the Commission fails to correct the violation through informal methods, it may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order, in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, the court shall grant a permanent or temporary injunction, restraining order, or other order.

(5) The Commission shall refer an apparent violation to the appropriate law enforcement authorities if the Commission is unable to correct such apparent violation under the authority given it by paragraph (4), if, upon request by the Commission, the Attorney General is unable to correct such

apparent violation under the authority given him by paragraph (6), or if the Commission determines that such referral is appropriate.

(6) Whenever in the judgment of the Commission, after affording due notice and an opportunity for a hearing, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 106, upon request by the Commission the Attorney General on behalf of the United States shall institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the person is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond by such court.

(7) In any action brought under paragraph (4) or (6) of this subsection, subpenas for witnesses who are required to attend a United States district court may run into any other district.

(8) Any party aggrieved by an order granted under paragraph (4) or (6) of this subsection may, at any time within sixty days after the date of entry thereof, file a petition with the United States court of appeals for the circuit in

which such order was issued for judicial review of such order.

(9) The judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(b) In any case in which the Commission refers an apparent violation to the Attorney General, the Attorney General shall respond by report to the Commission with respect to any action taken by the Attorney General regarding such apparent violation. Each report shall be transmitted not later than sixty days after the date the Commission refers any apparent violation, and at the close of every thirty-day period thereafter until there is final disposition of such apparent violation. The Commission may from time to time prepare and publish reports on the status of such referrals.

TITLE III—CODE OF PROFESSIONAL CONDUCT AND REGISTRY

CODE OF CONDUCT

SEC. 301. The Federal Lobbying Disclosure Commission shall have authority to cooperate with lobbyists and organizations of lobbyists in the development of a code of professional conduct for lobbying. Any such code shall be maintained and published by such lobbyists and organiza-

tions and shall include, but not be limited to, provisions that a lobbyist shall—

(1) conduct his professional activities with respect for the public interest;

(2) not intentionally disseminate false or misleading information; and

(3) not engage in any practice which tends to corrupt the integrity of communications between citizens and Federal officers and employees.

REGISTRY

SEC. 302. The Federal Lobbying Disclosure Commission shall have authority to enter into an agreement with lobbyists and organizations of lobbyists to establish, maintain, and publish a registry of lobbyists containing an identification of those lobbyists who agree to conform, and are determined to be in compliance, with the code of professional conduct described in section 301. No person convicted of a violation of section 106 shall be listed in such registry for a period of at least five years from the date of such conviction.

TITLE IV—MISCELLANEOUS

REPEAL OF FEDERAL REGULATION OF LOBBYING ACT

SEC. 401. The Federal Regulation of Lobbying Act (60 Stat. 839; 2 U.S.C. 261 et seq.) is repealed.

EFFECTIVE DATES

SEC. 402. (a) Except as provided in subsection (b), the provisions of this Act shall take effect on the date of its enactment.

(b) Sections 102, 103, 104, 105, 106, 204, and 401 shall take effect on the day on which the first regulations prescribed by the Federal Lobbying Disclosure Commission to implement sections 102, 103, and 104 become effective.

94TH CONGRESS
1ST SESSION

S. 2167

IN THE SENATE OF THE UNITED STATES

JULY 23 (legislative day, JULY 21), 1975

Mr. MUSKIE (for himself and Mr. JAVITS) introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

To provide for the recording and public disclosure of lobbying activities directed at the Congress and the executive branch, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Lobbying Disclosure Act of 1975".

TITLE I—REGULATION OF LOBBYING

FINDINGS AND PURPOSE

SEC. 101. (a) The Congress finds that—

(1) the confidence in Government depends upon the degree to which its people are well informed about Government activity;

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(2) the accountability which is essential to the democratic functioning of both the legislative and executive branches of Government can be assured only through the greatest possible disclosure of the information, opinions, and efforts of persuasion which are directed toward the policymaking process;

(3) as the policymaking process has become more complex, the lines of accountability have become more obscure, and consequently, public confidence in Government is at a very low level, a majority of Americans feel alienated from the operations of their Government, and many Americans believe that special interest groups get more from the Government than they do;

(4) the exercise of the freedom of speech and the right to petition the Government for redress of grievances which are cornerstones of our democratic system are themselves diminished when the public and the policymakers lack complete understanding of the pressures on the governmental process, including the information, opinions, activities, and identities of persons engaged in efforts to persuade the Congress or the executive branch;

(5) consideration of the public interest requires that information and opinions expressed to Congress and the executive branch by the advocates of one view

or interest be balanced against the information and opinions of advocates of alternative points of view;

(6) public and timely disclosure should be made of all efforts employed to persuade Members of the Congress and key officials of the executive branch to pursue a particular course of action whether by direct communication or by solicitation or employment of others to engage in such efforts; and

(7) the existing legislation designed to provide public disclosure of efforts to affect the policymaking process fails in a narrow interpretation of those considered to be lobbyists and in the limitation to the legislative process.

(b) It is the purpose of this Act to provide for the disclosure of the communications, activities, and the origin, amount, and utilization of funds and other resources of and by persons who seek to influence the legislative or executive process, and by so doing, to—

(1) assure elected representatives and executive branch officials that those who petition the Government represent the interests of the citizens for whom they speak;

(2) assure elected representatives and executive branch officials that the demands of special-interest groups will not obscure the needs of other special and

public interests by projecting an illusion of public sentiment when such sentiment does not exist;

(3) inform citizens of the different pressures brought to bear on the policymaking process;

(4) assure a balance of information in the policymaking process by providing timely notice to the public of activities of all persons representing interests before the legislative and executive branch of Government.

DEFINITIONS

SEC. 102. As used in this Act, the term—

(a) "Federal agency" includes any executive department, military department, Government corporation, Government controlled corporation, Federal Advisory Committee, or other establishment or independent instrumentality in the executive branch of the Government including the Executive Office of the President;

(b) "individual" means a human being;

(c) "person" includes an individual, corporation, company, association, firm, partnership, society, joint stock company, association, or other organization or group of persons;

(d) "officer or employee of the Congress" means any officer or employee in the legislative branch of the Federal Government and includes a Member of Congress, Delegate to Congress, or the Resident Com-

missioner from the Commonwealth of Puerto Rico, officers and employees of the United States Senate, the House of Representatives or any joint, standing, special or select committee or subcommittee thereof, or any Member of Congress, Delegate to Congress, or the Resident Commissioner of Puerto Rico;

(e) "legislative process" means any action taken by an officer or employee of the Congress to effect or prevent the introduction, consideration by Committee or staff of a committee, passage, defeat, or amendment of legislation including any bill, resolution, proposal, constitutional amendment, nomination, hearing, report, investigation, or other matters pending or proposed in either House, and any other matter which may be subject to action by either House;

(f) "Federal officer or employee" means any officer or employee of a Federal agency and includes the President and the Vice President;

(g) "executive policymaking process" means any action taken by a Federal officer or employee with respect to the legislative process or with respect to any pending or proposed rule, rule of practice, adjudication, regulation, determination, hearing, investigation, contract, grant, or license;

(h) "income" means—

(1) a salary, gift, donation, contribution, payment, loan, advance, service, or other thing of value received; or

(2) a contract, promise, or agreement (including a contingent fee contract), whether or not legally enforceable, to receive any item referred to in paragraph (1);

(i) "expenditure" means—

(1) a salary, gift, donation, contribution, purchase, payment, distribution, loan, advance, service, or other thing of value made, disbursed, or furnished, or

(2) a contract, promise or agreement, whether or not legally enforceable, to carry out any transaction referred to in paragraph (1);

(j) "committee" means any committee of the Senate or House of Representatives or any subcommittee of any such committee or any joint committee of Congress or any subcommittee of any such joint committee or any special or select committee of the Congress or any subcommittee of any such special or select committee;

(k) "legislative communication" means any communication by any person (except an exempt communication) with an officer or employee of the Congress to influence the legislative process;

(l) "executive communication" means any communication by any person (except an exempt communication) with a Federal officer or employee to influence the executive policymaking process;

(m) "exempt communications" means—

(1) any communication by any individual, acting solely on his own behalf, for redress of his grievances or to express his own opinion;

(2) any communication by any person to a department, agency, establishment, or instrumentality of any branch of the Federal Government in the exercise of a right of petition granted by section 553(e) of title 5, United States Code;

(3) a communication or solicitation by a Federal officer or employee acting in his official capacity provided that such communication is not in violation of section 3107 of title 5, United States Code and that the officer or employee does not solicit or attempt to solicit more than fifty persons to make a legislative or executive communication;

(4) a communication or solicitation by a State or local government officer or employee acting in his official capacity provided that the officer or employee does not solicit more than fifty persons to make a legislative or executive communication;

(5) any appearance by any person before a committee or Federal agency in public or executive session in connection with any measure or matter before such committee or Federal agency and any written statement submitted by any person in connection with such matter or measure and accepted for inclusion in the records of the committee or Federal agency provided that such appearance or statement is made a matter of public record by the committee or Federal agency within a reasonable time after the appearance or submission;

(6) the publication, distribution, or dissemination—

(A) in the normal course of business by a newspaper, magazine, or other periodical distribution to the general public in the form of news, editorial views, letters to the editor, or like matter;

(B) in the normal course of business by a radio or television broadcast in the form of news, editorial views, letters to the editor, or like matter; or

(C) in a book published for the general public;

(7) a communication or solicitation by a candi-

date, as defined in section 591 (b) of title 18, United States Code, made in the course of a campaign for Federal office;

(8) a communication or solicitation by or authorized by—

(A) a national political party of the United States or a National, State, or local committee or other organizational unit or a national political party regarding its activities, undertakings, policies, statements, programs, or platforms;

(B) a political party of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or a committee or other organizational unit of such political party, regarding its activities, undertakings, policies, statements, programs or platforms;

(C) a candidate for political office of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or a committee or other organizational unit acting on behalf of such candidate regarding the activities of the

candidate including undertakings, policies, statements, programs or platforms; or

(9) in the case of an individual, or the officers, directors, or employees of a corporation, company, firm, partnership, society, joint stock company, association, or other organization, legislative communications with Members of Congress or the personal staff of such Members representing the States and districts in which such individual, officers, directors or employees reside;

(n) "Comptroller General" means the Comptroller General of the United States;

(o) "legislative agent" means any person who, for any consideration (other than exempt travel expenses), is retained in a capacity other than as an officer or employee of the person by whom he is retained, to make legislative or executive communications or to solicit others to make legislative or executive communications acting either by himself or through any other person acting for him;

(p) "exempt travel expenses" means any payment or reimbursement of expenses for travel solely from one point in the United States to another point in the United States, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved

plus a per diem allowance for other expenses in an amount not in excess of 125 per centum of the maximum allowance payable under section 5702 (c) (1) of title 5, United States Code, for Government employees, except that in no case shall any amount more than $1,000 paid to one person within one year be considered to be exempt travel expenses;

(q) "voluntary membership organization" means an organization composed of persons or individuals who are members thereof on a voluntary basis and who, as a condition of membership, are required to make regular payments to the organization;

(r) "identification" means in the case of an individual, the name of the individual and his address, occupation, principal place of business, and title or position held in the business; and in the case of a person other than an individual, the name of the person, its officers and board of directors, and its address and principal place of business;

(s) "lobbyist" means—

(1) a legislative agent;

(2) any person who retains a legislative agent in any quarterly filing period, except that a person shall not be considered as being within the purview of this paragraph solely by reason of being a member

of a voluntary membership organization which may itself be a legislative agent;

(3) any officer or employee of any person (other than a legislative agent), if such officer or employee receives pay for his services as such an officer or employee and if he makes no more than fifteen legislative communications or executive communications in any quarterly filing period; except that no more than five such communications may be made in any one day;

(4) any person (other than a legislative agent) who employs any officer or employee as provided for in paragraph (3);

(5) any person who—

(A) solicits (other than as provided for in paragraph (6)), orally or otherwise, other persons to make legislative or executive communications, if such solicitation reaches or with reasonable certainty may be expected to reach at least a hundred persons, or

(B) solicits at least twenty-five persons who, for their efforts to make legislative or executive communication, are paid, or are promised the payment of, any consideration (other than exempt travel expenses) by the person

who made the solicitation or by any other person acting for him, or

(C) solicits contributions totaling $5,000 or more in any quarter to be used for the purpose of making legislative or executive communications;

(6) any person who, in the ordinary course of business, publishes, distributes, or circulates, as the publication of such person, a house organ, or a trade, labor or trade union, or commercial journal, or any other publication having the same general purposes as a house organ or a trade, labor or trade union, or commercial journal, if such publication—

(A) is not distributed to the general public as a usual and customary practice; and

(B) contains any matter soliciting the reader to make legislative or executive communications, except that, this paragraph shall not apply to the reproduction or retransmission of a communication from any other person who is required by this Act to register as a lobbyist if such reproduction or retransmission specifically identifies such other person;

(t) "lobbying" means the activities of any lobbyist in making legislative or executive communications, solic-

iting other persons to make legislative or executive communications, or soliciting contributions to make legislative or executive communications;

(u) "quarterly filing period" means any of the four calendar quarters which begin on January 1, April 1, July 1, or October 1; and

(v) "United States" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

REGISTRATION OF LOBBYISTS

SEC. 103. (a) Each lobbyist shall register and file a representation notice with the Comptroller General not later than five working days after first becoming a lobbyist, and each lobbyist who has filed such a notice and has been inactive as a lobbyist for three consecutive quarterly filing periods shall also register and file a representation notice when that lobbyist again engages in lobbying. The representation notice shall be in such form and contain such information as the Comptroller General shall prescribe, including—

(1) an identification of the lobbyist;

(2) an identification of each person on whose behalf the lobbyist expects to perform services as a lobbyist;

(3) a description of the financial terms and conditions (including any contingent fee arrangement) under which the lobbyist is employed or retained by any person, and the identification of that person;

(4) each aspect of the legislative process or executive policymaking process which the lobbyist expects to seek to influence, including any officer or employee of the Congress, any committee, Federal agency, or any Federal officer or employee, to whom a communication is to be made, the form of communication to be used, and whether the communication is to be for or against any measure or action;

(5) an identification of each person who, as of the date of filing, is expected to be acting for such lobbyist and to be engaged in lobbying, including—

(A) the financial terms or conditions (including any contingent fee arrangement) of such person's activity, and

(B) each aspect of the legislative process or executive policymaking process such person expects to seek to influence; and

(6) in the case of a voluntary membership organization, the approximate number of members and a description of the methods by which the decision to engage in lobbying is made.

(b) If at any time the information contained in a representation notice filed by a lobbyist is not current, accurate, and up to date, in all respects because of any change in circumstances or conditions with respect to such lobbyist (including termination of his status as a lobbyist), such lobbyist shall file with the Comptroller General within five working days after such change has occurred, any amendment or amendments to such notice as may be necessary to make the information contained in such notice completely current, accurate, and up to date in all respects. Each representation notice shall also be amended by the lobbyist at such intervals of time as the Comptroller General shall prescribe to reflect the current activities of the lobbyist.

RECORDS

SEC. 104. Each lobbyist shall maintain such financial and other records of lobbying activity as the Comptroller General shall prescribe. Such records shall be in accordance with generally accepted accounting principles and be preserved for a period of not less than two years after the date of the activity. Such records shall be available to the Comptroller General for inspection and shall include the following information—

(a) the total income received by the lobbyist and the total income received by the lobbyist for lobbying;

(b) the identification of each person from whom

income for lobbying is received, including the purpose and specific application of any such income received and the amount received;

(c) the expenditures of the lobbyist, including—

(1) the total expenditures of the lobbyist attributable to lobbying;

(2) an itemization of each expenditure for lobbying which exceeds $5 in amount of value, including the identification of the person to or for whom the expenditure is made, the date of the expenditure, and a description of the nature of the expenditure;

(3) expenditures relating to research, advertising, staff, entertainment, offices, travel, mailings, and publications used for lobbying; and

(4) the amount and the name of the recipient of any contribution made to a candidate as defined in section 591 (b) of title 18, United States Code, made in the course of a campaign for Federal office; and

(d) such other information as the Comptroller General shall prescribe to carry out the purpose of this Act.

REPORTS

SEC. 105. Each lobbyist, not later than ten working days after the last day of a quarterly filing period in which

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such lobbyist made a legislative communication or executive communication, shall file a report with the Comptroller General covering the lobbyist's activities during that period. Upon his own initiative or pursuant to a request by a committee or a Federal agency, the Comptroller General may request lobbyists to submit reports of activities each week during a period of consideration of a major public issue in the legislative process or executive policymaking process, with which the lobbyists are involved. Each report shall be in such form and contain such information as the Comptroller General by regulation shall prescribe, including—

(a) an identification of the lobbyist;

(b) an identification of each person on whose behalf the lobbyist performed services during the period;

(c) an identification of each person, including other lobbyists, who engaged in making legislative or executive communications or soliciting others to make legislative or executive communications on behalf of the reporting lobbyist during the filing period;

(d) the total income received by the lobbyist during the reporting period to make legislative or executive communications or to solicit others to make legislative or executive communications including an identification of the source and purpose of the contribution except that—

(A) a person shall not be required to identify any person from whom income of less than $100 in value is received in the filing period to make or solicit legislative or executive communications, but the report shall contain the number of such persons together with the aggregate of such income;

(B) in the case of a voluntary membership organization, the organization shall not be required to identify any member whose payments in the filing period to the organization for lobbying did not exceed 5 per centum of the total expenditures of the organization in the filing period for such purposes;

(C) if any item of income or expenditure is attributable in part to lobbying and in part to other purposes, such item may be reported, at the option of the person filing the report and in conformity with regulations prescribed by the Comptroller General—

(i) by a reasonably accurate allocation which sets forth that portion of the item received or expended to engage in lobbying as that portion bears to the sum of all such items received or promised, and the basis on which the allocation is made, or

(ii) by showing the amount of the item

together with a good faith estimate by such person of that part of the item reasonably allocable to the classification of income or an expenditure to engage in lobbying;

(e) the expenditures of the lobbyist including—

(1) the total expenditures attributable to lobbying;

(2) an itemization of each expenditure for lobbying which exceeds $15 in amount of value, including the identification of each person to or for whom the expenditure is made, the date of the expenditure and a description of the nature of the expenditure;

(3) expenditures relating to research, advertising staff, entertainment, offices, travel, mailings, and publications used for lobbying;

(4) any expenditure made directly or indirectly to or for any officer or employee of the Congress or Federal officer or employee which exceeds $15 in amount or value and any expenditure made directly or indirectly to or for one or more such officers or employees which, in aggregate amount or value, exceeds $60 in a calendar year, including an identification of the person or persons making and re-

ceiving such expenditure and a description of the expenditure; and

(5) the amount and the name of the recipient of any contribution made to a candidate as defined in section 591 (b) of title 18, United States Code, made in the course of a campaign for Federal office;

(f) each decision of the legislative process or executive policymaking process the lobbyist sought to influence including any bill, docket, or other relevant identifying numbers;

(g) a copy of any written communication used by the lobbyist during the period to solicit other persons to make legislative or executive communications, an estimate of the number of such persons to whom such written communication was made, and an estimate of the number of such persons who subsequently made legislative or executive communications;

(h) a description of the procedures, other than written communications, used by the lobbyist during the period to solicit other persons to make legislative or executive communications, an estimate of the number of such persons solicited, an estimate of the number of such persons who made legislative or executive communications, the specific purpose of the legislative or executive

communication, and the officers or employees of the Congress or Federal officer or employee contacted;

(i) a record of each legislative or executive communication made to a Federal officer or employee or an officer or employee of the Congress and the decision which was sought to be influenced including any bill, docket, or other relevant identifying numbers; and

(j) such other information as the Comptroller General by regulation may prescribe to carry out the purposes of this Act.

EFFECT OF FILING ON CERTAIN DETERMINATIONS UNDER THE INTERNAL REVENUE CODE OF 1954

SEC. 106. Compliance with the requirements of sections 103, 104, or 105 of this Act shall not be taken into consideration in determining, for purposes of the Internal Revenue Code of 1954, whether a substantial part of the activities of an organization is carrying on propaganda or otherwise attempting to influence legislation.

TITLE II—DISCLOSURE OF EXECUTIVE BRANCH COMMUNICATIONS

SEC. 201. (a) Any agency official who receives an oral or written communication which pertains to any Federal agency activity or policy issue shall prepare a record of that communication as prescribed in legislation creating or regulations promulgated by the agency. For the purposes of this title, the term "agency official" includes—

(1) all officials and employees of any Federal agency compensated at a rate equal to or in excess of that for grade GS–15 in the General Schedule, and

(2) any officials and employees of any Federal agency who are compensated at a rate less than that for grade GS–15 in the General Schedule only to the extent that such communications pertain to their involvement in any rulemaking, investigative, prosecutorial, or adjudicative function connected with a proceeding before any Federal agency or the courts.

(b) The records of communication shall be in such form and contain such information as the Comptroller General shall prescribe, including—

(1) the name and position of the agency official who was a party to the communication;

(2) the date of receipt or occurrence of the communication;

(3) an identification, so far as possible, of the person with whom the communication occurred and of the person on whose behalf the outside party was acting;

(4) a brief summary of the subject matter or matters of oral communications, including relevant docket numbers to which the communication pertains, if known;

(5) in the case of communication through letters,

documents, briefs, and other written material, copies of such maerial in its original form as received; and

(6) a brief description of any action taken by the official in response to the communication.

(c) Records of all such communications required under subsection (a) shall be filed for public inspection and copying with the public reading room of the agency within two working days of receipt or occurrence of the communication, except that—

(1) the record of a communication with a party outside the Federal agency which pertains to a pending agency proceeding shall be placed in the public record of such proceeding,

(2) the record of a communication with a person who acts as an informant by offering incriminating material under a specific assurance of confidentiality, to a Federal agency for use in a civil or criminal enforcement proceeding shall be placed in a central file solely for purposes of internal agency review, and

(3) no record of communication shall be filed in conjunction with receipt or occurrence of a communication with a member of the working press.

(d) Each Federal agency shall maintain such files of records of communication and a central index organized by subject matter and cross-referenced as to parties other than

those of the agency. Files of such records shall be maintained for a period of at least five years.

(e) Each Federal agency shall prepare and maintain a prospective and retrospective public calendar and such cumulative calendars and records to provide such notice and recordation of Federal agency activities as the Comptroller General shall prescribe, including—

(1) public hearings;

(2) commission or agency meetings;

(3) advisory committee meetings; and

(4) such staff meetings, speeches, symposiums, and meetings with outside parties as the Comptroller General may prescribe.

TITLE III—DUTIES OF THE COMPTROLLER GENERAL

SEC. 301. It shall be the duty of the Comptroller General—

(a) to develop forms for the registration and filing of notices of representation, records, and reports required pursuant to sections 103, 104, and 105 of this Act and to furnish such forms upon request;

(b) to prepare a manual setting forth recommended uniform methods of bookkeeping and reporting and to furnish such manual to lobbyists upon request;

(c) to file, code, and cross-index registration statements and reports to carry out the purposes of this Act;

(d) to make the registration statements, notices, and reports filed with him available for public inspection and copying, commencing as soon as practicable, but not later than the end of the second day following the day on which any such item was received, and to permit copying of any such report or statement by hand or by duplicating machine, as requested by any person, at the expense of such person: *Provided*, That any charge therefor shall not exceed actual marginal costs, but no information copied from such reports and statements shall be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(e) to preserve the originals or copies of such notices and reports for a period of ten years from date of receipt;

(f) to compile and summarize, with respect to each filing period, the information contained in such notices and reports in a manner which facilitates the disclosure of efforts to influence the legislative process or executive policymaking process, including but not limited to. information on—

(1) lobbyist activities and expenditures pertaining to specific legislative or executive actions, in-

cluding an identification of the lobbyists involved, an identification of the persons in whose behalf the lobbyist acted, and the amount of income received by the lobbyist from such persons, and

(2) the activities and expenditures of lobbyists who share an economic, business, or other common interest in the legislative or executive actions which they have sought to influence;

(g) to have such information compiled, summarized, and published in the Federal Register within ten working days after the close of each filing period; except that, with respect to reports concerning major issues required to be filed each week, compilation, summarization, and publication shall take place no more than three working days after the close of the filing period for each week;

(h) to have each representation notice which is filed by any lobbyist published in the Federal Register within three days after each such representation notice is received by the Comptroller General;

(i) to ascertain whether any lobbyist has failed to comply fully and accurately with the disclosure requirements of this Act and promptly notify such person to file such representation notices and reports as are necessary to satisfy the requirements of this Act or regulations

prescribed by the Comptroller General under this Act;

(j) to ascertain whether any agency official has failed to comply fully and accurately with the record of communication requirements of this Act and promptly notify such official to file such records as are necessary to satisfy the requirements of this Act or regulations prescribed by the Comptroller General under this Act;

(k) to make audits and field investigations with respect to the notices and reports filed under the provisions of this Act, and with respect to alleged failures to file any notice or report required under the provisions of this Act, and upon complaint by any individual, with respect to alleged violations of any part of this Act;

(l) to prepare a special study or report upon the request of any Member of the House of Representatives or the Senate from information in the records of the Comptroller General; or if such records do not contain the necessary information, but the information would fall under the scope of information required by this Act, the Comptroller General may inspect the records of the appropriate parties and prepare the report, but only if such special inspection can be completed in a reasonable time before the information would normally be filed; and

(m) to transmit reports to each House of the Congress no later than March 31 of each year, containing a

detailed statement with respect to the activities of the Comptroller General in carrying out his duties under this title, together with recommendations for such legislative or other action as the Comptroller General considers appropriate.

ADVISORY OPINIONS

SEC. 302. (a) (1) Upon written request to the Comptroller General by any person, he may render an advisory opinion, in writing, within a reasonable time with respect to whether any specific transaction or activity by such person is covered by the provisions of this Act.

(2) Notwithstanding any other provision of law, any person with respect to whom an advisory opinion is rendered under section (1) who acts in good faith in accordance with the provisions and findings of such advisory opinion shall be presumed to be in compliance with the provisions of this Act.

(3) Any request made under section (1) shall be made public by the Comptroller General. The Comptroller General shall, before rendering an advisory opinion with respect to such request, provide any interested person with an opportunity to transmit written comments to the Comptroller General with respect to such request.

(b) The Comptroller General shall take all actions necessary to the publication, codification, indexing, cross-

referencing, and distribution to Federal Depository Libraries of all advisory opinions issued by him pursuant to this section. Copies of all such opinions and indexes shall be available at cost to any person upon written request.

RULEMAKING

SEC. 303. The Comptroller General shall prescribe such rules and regulations, which shall conform to the provisions of chapter 5 of title 5, United States Code, as may be necessary and appropriate to carry out the provisions of this Act.

POWERS OF THE COMPTROLLER GENERAL

SEC. 304. (a) The Comptroller General has the power for the purposes of this Act—

(1) to require, by special or general orders, any person to submit, in writing, such reports, records, notices, and answers to such questions as the Comptroller General may prescribe relating to the execution of his duties; and such submission shall be made within such a reasonable period of time and under oath or otherwise as the Comptroller General may determine;

(2) to administer oaths or affirmations, and to delegate the power to do so;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of his duties;

(4) in any proceeding or investigation, to order

testimony to be taken by affidavit or by deposition before any person who is designated by the Comptroller General and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in the like circumstances in the courts of the United States;

(6) to initiate (through civil proceedings for injunctive, declaratory, or other appropriate relief), defend, or appeal any civil action in the name of the Comptroller General for the purpose of enforcing the provisions of this Act, through the General Counsel of the General Accounting Office;

(7) to formulate general policy with respect to the administration of this Act; and

(8) to develop and prescribe such forms as may be necessary to carry out the purposes of this Act.

(b) Any United States district court within the jurisdiction of which any inquiry under this Act is carried on, may, upon petition by the Comptroller General, in case of refusal to obey a subpena or order of the Comptroller General issued under subsection (a) of this section, issue an order requiring compliance therewith. Any failure to

obey any such order of the court may be punished by the court as a contempt thereof.

(c) No person shall be subject to civil liability to any person (other than the Comptroller General of the United States) for disclosing information at the request of the Comptroller General.

ENFORCEMENT

SEC. 305. (a) Any person who believes a violation of this Act has occurred may file a complaint with the Comptroller General.

(b) (1) The Comptroller General, upon receiving a complaint under subsection (a), or if he has reason to believe that any person has committed a violation of this Act, may serve upon such person a complaint stating charges in that respect and a notice of a hearing upon a day and place therein fixed at least thirty days after service of said complaint. The person so complained of shall have the right to appear at such hearing and show cause why an order should not be entered by the Comptroller General requiring such person to cease and desist from activities in violation of the law so charged in the complaint, and why such person should not affirmatively comply with the provisions of this Act in such manner as prescribed by the Comptroller General. The testimony in any such hearing shall be reduced to writing and filed in the office of the Comptroller General.

(2) If upon such hearing, the Comptroller General shall be of the opinion that the person complained of did violate or is violating this Act he shall make a report in writing in which he shall state his findings of facts and shall issue and cause to be served on such person an order requiring such person to cease and desist from activities in violation of this Act and to affirmatively comply with provisions of this Act in such manner as prescribed by the Comptroller General.

(c) Until such time as the Comptroller General enters an order pursuant to subsection (b), the Comptroller General may endeavor to correct violations of this Act by informal methods of conference, conciliation, and persuasion: *Provided*, That any person against whom a complaint has been issued and who elects to resolve any such complaint by informal methods must sign a compliance agreement, if such agreement represents any such person's willing and informed resolution of the allegations of the complaint, under such conditions as the Comptroller General may prescribe, as a binding final resolution and adjustment of any such complaint, the violation of which may be punished by any district court of the United States as a contempt thereof.

(d) Complaints, orders, and other processes of the Comptroller General under this section may be served by anyone duly authorized by the Comptroller General either by—

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(1) delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the society, joint stock company, association, company, or other organization to be served;

(2) leaving a copy thereof at the residence or the principal place of business or principal office of such person to be served; or

(3) mailing a copy thereof by registered mail or by certified mail addressed to such person at the residence or principal place of business or principal office of such person to be served.

The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

(e) An order of the Comptroller General to cease and desist from activities in violation of this Act and to affirmatively comply with provisions of this Act in such manner as may be prescribed by the Comptroller General shall become final—

(1) upon the expiration of the time allowed for filing a petition for review pursuant to section 307 (b),

if no such petition has been duly filed within such time;

(2) upon the expiration of the time allowed for filing a petition for certiorari pursuant to section 307 (b), if the order of the Comptroller General has been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed;

(3) upon the denial of a petition for certiorari, if the order of the Comptroller General has been affirmed or the petition for review dismissed by the court of appeals; or

(4) upon the expiration of fifteen days from the date of issuance of the decree of the Supreme Court, if such Court directs that the order of the Comptroller General be affirmed or the petition for review dismissed.

(f) (1) Whenever the Comptroller General has reason to believe that any person has violated, or is violating, any provision of this Act, or regulations promulgated thereunder, and that the enjoining thereof pending the issuance of a complaint by the Comptroller General, until such complaint is dismissed by the Comptroller General or set aside by the court on review, or until the order of the Comptroller General made thereon has become final, would serve the purposes of this Act, the Comptroller General by any attorney designated

by him for such purpose may bring suit in a district court of the United States to enjoin any such activity.

(2) Upon a showing that such action would serve the purposes of this Act and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted: *Provided, however,* That if a complaint is not filed within ten days after the issuance of the temporary restraining order or within thirty days after the issuance of a preliminary injunction, any such temporary restraining order or preliminary injunction shall be dissolved by the court and be of no further force and effect: *Provided further,* That in proper cases the Comptroller General may seek, and the court may issue, a permanent injunction. Any such suit shall be brought in the district in which such person resides or engages in such activity complained of or transacts business.

(g) Whenever the Comptroller General has reason to believe that any person has violated, or is violating, any provision of this Act, the Comptroller General through the General Counsel of the General Accounting Office may bring an action for recovery or imposition of civil penalty as provided by section 306(b) in any district court of the United States.

(h) The Comptroller General shall refer apparent criminal violations of this Act to the appropriate law enforcement authority.

SANCTIONS

SEC. 306. (a) After hearing and upon a finding that any person has violated or neglected duties imposed pursuant to section 103, 104, or 105 of this Act, the Comptroller General may issue a censure of such person.

(b) Any person who violates any provision of this Act or an order of the Comptroller General after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $5,000 for each violation which shall accrue to the United States and may be recovered in a civil action brought by the Comptroller General. Each separate violation of a Comptroller General's order shall be a separate offense, except that in the case of a violation through continuing failure to obey or neglect to obey a final order of the Comptroller General, each day of continuance of such failure or neglect shall be deemed a separate offense.

(c) After hearing and upon a finding that any Federal officer or employee has violated or neglected duties pursuant to title III of this Act, the Comptroller General may censure such officer or employee.

(d) The Comptroller General may refer to the Civil Service Commission for appropriate disciplinary action any apparent violation through knowing failure or neglect of a final order of the Comptroller General by any Federal officer or employee.

(e) Any lobbyist who intentionally falsifies any part of a representation notice or any report which such lobbyist filed with the Comptroller General under this Act shall be fined not more than $10,000, or imprisoned for not more than two years, or both.

(f) Any lobbyist who intentionally violates section 103, 104, or 105 of this Act shall be fined not more than $10,000, or imprisoned for not more than two years, or both.

JUDICIAL REVIEW

SEC. 307. (a) The Comptroller General, or any person who is or may be covered by this Act, may institute such actions in the appropriate district court of the United States including actions for declaratory judgment as may be appropriate to construe the constitutionality of any provisions of this Act.

(b) Any person required by an order of the Comptroller General to cease and desist from activities in violation of this Act and to affirmatively comply with provisions of this Act in such manner as prescribed by the Comptroller General pursuant to section 305 may obtain a review of such order in the court of appeals of the United States, within any circuit where such activity occurred or where such person resides or carries on business, by filing in the court, within thirty days from the date of the service of such order, a written petition praying that the order of the

Comptroller General be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Comptroller General, and thereupon the Comptroller General shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Comptroller General until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Comptroller General, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent obstruction of the purposes of this Act. The findings of the Comptroller General as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Comptroller General is affirmed the court shall thereupon issue its own order commanding obedience to the terms of such order of the Comptroller General. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfication of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Comptroller General, the court may order such additional evidence

to be taken before the Comptroller General and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Comptroller General may modify his findings as to the facts, or make new findings by reason of the evidence so taken, and shall file such modified or new findings, which, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon filing of a petition for certiorari, as provided in section 1254 of title 28, United States Code, except that such petition must be filed within sixty days of issuance of the order of the court of appeals.

(c) It shall be the duty of the district courts, the courts of appeals, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any action instituted under this Act.

TITLE IV—GENERAL PROVISIONS

TRANSFER OF FUNCTIONS AND RECORDS

SEC. 401. (a) All rights, powers, and duties vested in the Clerk of the House of Representatives or the Secretary of the Senate for purposes of registering or controlling lobbyists

or lobbying activities are hereby transferred to the Comptroller General.

(b) All documents, papers, and any and all other information in the custody or control of the Clerk of the House of Representatives or the Secretary of the Senate obtained or prepared pursuant to the provisions of the Federal Regulation of Lobbying Act or any other similar laws are hereby transferred to the custody and control of the Comptroller General.

AMENDMENTS AND REPEALS

SEC. 402. The Federal Regulation of Lobbying Act (2 U.S.C. 261 et seq.) is hereby repealed.

EFFECTIVE DATE

SEC. 403. The registration, reporting, and recordkeeping requirements of sections 103, 104, and 105 of this Act shall become effective sixty days after the regulations necessary to the operation of such sections are promulgated by the Comptroller General pursuant to section 301 (a) and section 303 of this Act.

94TH CONGRESS
1ST SESSION

S. 2477

IN THE SENATE OF THE UNITED STATES

OCTOBER 6 (legislative day, SEPTEMBER 11), 1975

Mr. RIBICOFF (for himself, Mr. BROCK, Mr. CHILES, Mr. JAVITS, Mr. KENNEDY, Mr. MUSKIE, Mr. PERCY, Mr. ROTH, and Mr. STAFFORD) introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

To provide more effective public disclosure of certain lobbying activities to influence issues before the Congress and the executive branch, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Lobbying Act of 1975".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds—

(1) that the enhancement of responsible representative government requires that the fullest opportunity be afforded to the people of the United States to exercise their constitutional right to petition their Government for

a redress of grievances, to express their opinion freely to their Government, and to provide information to their Government; and

(2) that the identity and extent of the activities of organizations or individuals who are paid to engage in certain efforts to influence issues before Congress or the executive branch, and the identity and extent of the activities of organizations which engage on their own behalf in certain efforts to influence an issue before Congress or the executive branch should be publicly and timely disclosed in order to provide the Congress, the executive branch, and all members of the public with a full understanding of the nature and source of such efforts.

(b) It is the purpose of this Act to provide for the disclosure to the Congress, the executive branch, and to all members of the public of such efforts without interfering with the right to petition the Government for a redress of grievances.

GENERAL DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "committee or office of the Congress" means any standing, special, or select committee of the Senate or the House of Representatives, any joint committee of the Congress, any subcommittee of any such committee

or joint committee, any conference committee of the Congress, any office of the Senate or the House of Representatives, any office of the Congress, and the Office of Technology Assessment, including the Technology Assessment Board;

(2) "Comptroller General" means the Comptroller General of the United States;

(3) "director" means, with respect to an organization other than a partnership, an individual who is a member of the governing body of the organization, and, with respect to a partnership, an individual who is a partner;

(4) "employee" includes, with respect to a Member, officer, committee, or office of the Congress, an individual performing personal services as an expert or consultant under contract with such Member, officer, committee, or office;

(5) "executive agency" has the meaning given to it by section 105 of title 5, United States Code, except that for purposes of this Act, such term includes the United States Postal Service and the Postal Rate Commission but does not include the General Accounting Office;

(6) "expenses" means—

(A) a payment, distribution, loan, advance, deposit, or gift of money or anything of value made, disbursed, or furnished, and

(B) a promise, contract, or agreement, whether or not legally enforceable, to make, disburse, or furnish any item referred to in subparagraph (A);

(7) "identification" includes, in the case of an individual, the name of the individual and his occupation, business address, and position held in the business; and, in the case of an organization, the name of the organization and its address, principal place of business, nature of its business or activities, chief executive officer, and directors;

(8) "income" means—

(A) a gift, donation, contribution, payment, loan, advance, service, salary, or other thing of value received, and

(B) a contract, promise, or agreement, whether or not legally enforceable, to receive any item referred to in subparagraph (A);

(9) "influence" means, with respect to any issue before the Congress or the executive branch, to affect, or to attempt to affect, the disposition of such issue, whether by initiating, promoting, opposing, effectuating,

delaying, altering, amending, withdrawing from consideration, or otherwise;

(10) "issue before the Congress" means the total of all matters, both substantive and procedural, relating to (A) any pending or proposed bill, resolution, report, nomination, treaty, hearing, investigation, or other similar matter in either the Senate or the House of Representatives or any committee or office of the Congress, or (B) any action or proposed action by a Member, officer, or employee of the Congress to affect, or attempt to affect, any action or proposed action by any officer or employee of the executive branch;

(11) "issue before the executive branch" means the total of all matters, both substantive and procedural, relating to any action or possible action by any executive agency, or by any officer or employee of the executive branch, concerning (A) any pending or proposed rule, rule of practice, adjudication, regulation, determination, hearing, investigation, contract, grant, license, negotiation, or the appointment of officers and employees, other than appointments in the competitive service, or (B) any issue before the Congress;

(12) "Member, officer, or employee of the Congress" means a Member of the Senate or the House of Representatives, a Delegate to the House of Representa-

tives, the Resident Commissioner from Puerto Rico, and an officer or employee of the Senate or the House of Representatives or of any Member, committee, or office of the Congress;

(13) "officer or employee of the executive branch" means an officer or employee of any executive agency and any other individual serving as an officer or employee of the United States in the executive branch of the Government other than an officer or employee of the General Accounting Office;

(14) "organization" includes a corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or group of individuals with officers, directors, or employees;

(15) "person" includes an individual and an organization;

(16) "personal travel expenses" means expenses for travel solely from one point in the United States, or its territories or possessions, to another point in the United States, or its territories or possessions, but only if the amount paid or received as reimbursement for such expenses does not exceed the actual cost of the transportation involved plus a per diem allowance for other actual expenses in an amount not in excess of the maxi-

mum applicable allowance payable under section 5702 (c) (1) of title 5, United States Code, for Government employees;

(17) "quarterly period" means the period covered by a calendar quarter; and

(18) "voluntary membership organization" means an organization composed of persons who are members thereof on a voluntary basis.

DEFINITIONS RELATING TO LOBBYING AND LOBBYIST

SEC. 4. (a) As used in this Act, the term "lobbying" means the making of lobbying communications or lobbying solicitations, or both.

(b) Except as provided in subsection (d), as used in this Act, the term "lobbying communication" means—

(1) a communication with a Member, officer, or employee of the Congress, or a committee or office of the Congress, to seek to influence an issue before the Congress; and

(2) a communication with an officer or employee of the executive branch requesting or soliciting such officer or employee to communicate with a Member, officer, or employee of the Congress, or a committee or office of the Congress, to influence an issue before the Congress (as defined in section 3 (10) (A)).

(c) Except as provided in subsection (d), as used in

this Act, the term "lobbying solicitation" means a solicitation urging, requesting, or requiring any person—

(1) to make a communication with a Member, officer, or employee of the Congress, or a committee or office of the Congress, to influence an issue before the Congress; or

(2) to make a communication with an officer or employee of the executive branch, or any executive agency, to influence an issue before the executive branch; or

(3) to solicit another person to make a communication described in paragraph (1) or (2).

(d) As used in this Act, the terms "lobbying communication" and "lobbying solicitation" do not include—

(1) a communication or solicitation by an individual, acting solely on his own behalf, for redress of his personal grievances or to express his own personal opinion;

(2) a communication which deals only with the existence, status, or effect of an issue before Congress;

(3) testimony given before a committee or office of the Congress or submitted to a committee or office of the Congress for inclusion in the record of a hearing conducted by such committee or office;

(4) a communication or solicitation by an officer or

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employee of the executive branch, acting in his official capacity, or a communication or solicitation by a Member, officer, or employee of the Congress, acting in his official capacity;

(5) a communication or solicitation by an officer or employee of a State or local government, acting in his official capacity;

(6) a communication or solicitation made through the dissemination, in the normal course of business, of any news, editorial view, letter to an editor, or like matter by a newspaper, magazine, or other periodical published as a usual and customary practice for distribution to the general public; by a radio or television broadcast; or by a book published for the general public; except that this paragraph shall not apply to any communication or solicitation which appears in a paid advertisement in such publication or broadcast, and, for purposes of this Act, such communication or solicitation shall be treated as having been made by the person paying for the advertisement;

(7) a communication or solicitation by (or authorized by) a candidate, as defined in section 591 (b) of title 18, United States Code, or a candidate for a State or local office, made in his capacity as a candidate for Federal, State, or local office; or

(8) a communication or solicitation by (or authorized by)—

(A) a political party (as defined in section 301(m) of the Federal Election Campaign Act of 1971) or a National, State, or local committee or other organizational unit of such a political party, regarding its activities, undertakings, policies, statements, programs, or platforms; or

(B) a political party recognized as such under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or a committee or other organizational unit of such a political party, regarding its activities, undertakings, policies, statements, programs, or platforms.

(e) As used in this Act, the term "lobbyist" means an individual or organization which receives any income (other than payment or reimbursement for personal travel expenses, income received as an officer, director, or employee of an organization or as an employee of an individual, and, in the case of a voluntary membership organization, income received from the members of such organization)—

(1) to make or for making in any quarterly period one or more lobbying communications; or

(2) to make or for making in any quarterly period

one or more lobbying solicitations (other than solicitations to which subsections (f) (2) and (f) (3) apply) which refer to the same issue or issues before the Congress or the executive branch and which reach, or may reasonably be expected to reach, a total of five hundred or more persons either directly or through retransmission or republication by any other person at the request of such individual or organization.

(f) As used in this Act, the term "lobbyist" also means an organization which, acting through its officers, directors, or employees, or through any other person who is not a lobbyist and who acts at the request of the organization and with its prior knowledge—

(1) makes in any quarterly period on its own behalf, or on behalf of its members, twelve or more oral lobbying communications, excluding any communication with a Member of Congress (or any individual on the personal staff of such Member) representing a whole or a part of the State in which such officer, director, employee, or other person has his legal residence; or

(2) expends $200 or more to make on its own behalf, or on behalf of its members, or to retain for consideration any other person to make, one or more lobbying solicitations in any quarterly period, which refer to the same issue or issues before Congress or the executive

branch, and which reach, or may reasonably be expected to reach, a total of five hundred or more persons either directly or through retransmission or republication by any other person at the request of such organization or by the person so retained; or

(3) makes on its own behalf or on behalf of its members, or retains for consideration any other person to make, one or more lobbying solicitations in any quarterly period which refer to the same issue or issues before Congress or the executive branch, and which reach, or may reasonably be expected to reach, either directly or through retransmission or republication by any other person at the request of such organization or the person so retained, fifty or more officers, directors, or employees of the organization, or twelve or more other organizations with which the organization is affiliated.

(g) For purposes of this Act—

(1) a written lobbying communication or solicitation which is made by an individual or organization, acting as an attorney or agent for, or under contract with, another person and which identifies such other person, but does not identify such individual or organization as the one making such communication or solicitation, shall be treated as having been made by such other person;

(2) an oral lobbying communication which is made simultaneously to more than one individual shall be treated as one oral lobbying communication; and

(3) if any organization which is a lobbyist with respect to any issue under paragraph (2) or (3) of subsection (f) requests, urges, or requires an affiliated organization to make any lobbying solicitation with respect to that issue, any such lobbying solicitation made by such affiliated organization shall be treated as made by the other organization.

REGISTRATION

SEC. 5. (a) Each person shall register with the Comptroller General not later than fifteen days after becoming a lobbyist under the provisions of this Act. The registration shall be in such form as the Comptroller General shall prescribe, and shall contain—

(1) an identification of the lobbyist;

(2) an identification of the subject matter of each category of issues before the Congress or the executive branch which the lobbyist, as of the date of filing, expects to seek to influence by lobbying, including, where known, an identification of any particular issue before the Congress or executive branch which the lobbyist expects to seek to influence by lobbying, and a general description of the means which the lobbyist expects to

employ to influence such categories of issues or particular issues;

(3) an identification of each organization from which the lobbyist received income for lobbying during the twelve-month period preceding the date of filing, and an identification of each individual from whom the lobbyist received income for lobbying during such period if the amount of income received from the individual constituted 5 per centum or more of the total income for lobbying received by the lobbyist during such period; and

(4) in the case of a voluntary membership organization, the approximate number of persons who are members of the organization, and a description of the methods by which the organization decides to engage in lobbying with respect to any issue before the Congress or the executive branch.

(b) The registration filed under subsection (a) by an individual or organization which is a lobbyist under section 4(e) shall also include—

(1) an identification of each person on whose behalf the lobbyist's services have been retained;

(2) a description of the financial terms and conditions, including contingent fee arrangements or other

conditions, under which the lobbyist is retained by each such person; and

(3) an identification of each individual to whom, as of the date of filing, the lobbyist expects to provide income (other than personal travel expenses) to make one or more lobbying communications.

(c) The registration filed under subsection (a) by an organization which is a lobbyist under section 4(f) shall also include an identification of each officer, director, and employee of the lobbyist whom, as of the date of filing, the lobbyist expects to make one or more oral lobbying communications.

(d) The registration filed under subsection (a) by a lobbyist shall be amended by the lobbyist at such intervals of time as the Comptroller General shall prescribe to reflect the current activities of the lobbyist, but in no event shall changes in the information required by subsections (a)(1), (b), and (c) be reported more than fifteen days after such change occurs.

(e) A registration filed under subsection (a) shall be effective for a period of twelve months. Each lobbyist shall file a new registration under subsection (a) within fifteen days after the expiration of his registration, except that a person whose registration has expired and who has ceased

to be a lobbyist shall register under subsection (a) not later than fifteen days after again becoming a lobbyist.

RECORDS

SEC. 6. Each lobbyist and each person who retains a lobbyist shall maintain such financial records and other records relating to the registrations and reports required to be filed under this Act as the Comptroller General shall prescribe as necessary for the effective implementation of this Act. Such records shall be subject at any time, or from time to time, to such reasonable, special, periodic, or other examinations by representatives of the Comptroller General as the Comptroller General deems necessary for the effective implementation of this Act. Such financial records shall be kept in accordance with generally accepted accounting principles. All records required to be maintained by this section shall be preserved for a period of five years.

REPORTS

SEC. 7. (a) Each lobbyist who engages in lobbying during any quarterly period shall, not later than fifteen days after the close of the period, file a report with the Comptroller General covering the lobbyist's lobbying activities during the period. Each report shall be in such form as the Comptroller General shall prescribe and shall contain—

(1) an identification of the lobbyist; and

(2) a record of any gift or loan of money or any-

thing of value which exceeds $50 in amount or value made during the period by the lobbyist, directly or indirectly, to any Member, officer, or employee of the Congress, including an identification of the individuals making and receiving such gift or loan and a description of the gift or loan.

Paragraph (2) shall not apply to any loan made by a financial institution in the regular course of business and on terms and conditions that are no more favorable than available generally, or to any gift or loan made by an individual who is a lobbyist, unless the person who retains such lobbyist pays or reimburses him for such a gift or loan.

(b) In the case of any individual or organization which is a lobbyist under section 4(e)(1), the report under subsection (a) shall also include the following information—

(1) an identification of each issue before the Congress which the lobbyist sought to influence during the period, on behalf of any person who retained him, by making one or more lobbying communications, an identification of the person for whom any such lobbying communication was made, and the amount of income received from such person for lobbying during the period in connection with each issue before the Congress;

(2) an identification of each individual who received income from the lobbyist (other than personal

travel expenses) for making one or more lobbying communications during the period, and each issue before Congress with respect to which such communications were made; and

(3) if, during the period, the lobbyist made, on behalf of any person identified by the lobbyist pursuant to paragraph (1), any lobbying solicitation concerning an issue before Congress which is not reported under subsection (d), an identification of each issue before the Congress with respect to which any such lobbying solicitation was made, an estimate of the total number of persons so solicited in connection with each such issue, an estimate of the number of persons so solicited in writing in each State, and a description of the geographic or other basis on which persons were selected for solicitation.

(c) In the case of any organization which is a lobbyist under section 4(f)(1), the report under subsection (a) shall also include the following information—

(1) an identification of each issue before the Congress which the organization sought to influence during the period by making one or more lobbying communications;

(2) an identification of each officer, director, or employee of the organization who made on behalf of the

organization one or more oral lobbying communications during the period, an identification of each affiliated organization to which the organization made one or more lobbying solicitations concerning an issue before Congress during the period, and an identification of each issue before the Congress with respect to which any such lobbying communication or lobbying solicitation was made;

(3) if the organization made any lobbying solicitation concerning an issue before the Congress during the period which solicits any person other than its officers, directors, or employees, and which is not reported under this subsection or subsection (d), an identification of each issue before the Congress with respect to which any such lobbying solicitation was made, an estimate of the total number of persons so solicited in connection with each such issue, an estimate of the number of persons so solicited in writing in each State, and a description of the geographic or other basis on which persons were selected for solicitation; and

(4) the total expenses incurred during the period in connection with all the issues before the Congress with respect to which the organization engaged in lobbying, including expenses incurred on behalf of the organization by another person which were not, and will not be,

reimbursed to such other person by the organization and are not, and will not be, reported by such person under this section.

This subsection shall not apply to any action taken by the lobbyist with respect to which a report under subsection (a) is required under subsection (d).

(d) In the case of an individual or organization which is a lobbyist under section 4(e)(2) and of an organization which is a lobbyist under section 4(f)(2) or 4(f)(3), or both, the report under subsection (a) shall also include the following information concerning each solicitation or series of solicitations which referred to the same issue or issues before Congress or the executive branch and which reached, or could reasonably be expected to reach, in identical or similar form, five hundred or more persons either directly or by republication by any other person at the request of such individual or organization—

(1) an identification of each issue before the Congress or the executive branch with respect to which any such solicitation was made during the period;

(2) a representative sample of each such written lobbying solicitation described in section 4(e)(2) or 4(f)(2) and a copy of the transcript of any such oral lobbying solicitation described in such sections;

(3) a description of the procedures used in making

each such lobbying solicitation described in section 4 (e) (2), 4 (f) (2), or 4 (f) (3) with respect to which paragraph (2) does not apply and which were made during the period, and a description of the substance of each such solicitation;

(4) in the case of any individual or organization which is a lobbyist under section 4 (e) (2), an identification of each person from whom income was received during the period for making any such lobbying solicitation and the amount of income so received from each such person in connection with each issue before the Congress with respect to which any such solicitation was made;

(5) with respect to each issue before the Congress, an estimate of the total number of persons solicited by such lobbying solicitation and an estimate of the number of persons solicited in writing in each State; and

(6) with respect to each issue before the Congress, the expenses incurred in making such lobbying solicitation, including expenses incurred by another person on behalf of the lobbyist which were not, and will not be, reimbursed to such other person by the lobbyist and are not, and will not be, reported by such other person under this section.

(e) If the expenses or income which a lobbyist must

report under subsection (b), (c), or (d) are included in an item partly attributable to other purposes, such expenses or income may be reported, in conformity with regulations prescribed by the Comptroller General, (A) by a good faith allocation which sets forth with reasonable accuracy that portion of the item expended or received for the lobbying activity concerned, and the basis on which the allocation is made, or (B) by showing the amount of the item together with a good faith estimate by such lobbyist of that part of the item reasonably allocable to the lobbying activity concerned.

(f) Wherever a lobbyist is required under subsection (b), (c), or (d) to identify an issue before the Congress, the identification shall include, where applicable, the bill or other identifying number, and what position the lobbyist took on such issue, and shall be made in such detail as shall disclose the specific matter or aspect of such issue with respect to which the lobbyist engaged in the lobbying activity concerned.

EFFECT ON TAX STATUS

SEC. 8. An organization shall not be denied exemption under section 501 (a) of the Internal Revenue Code of 1954 as an organization described in section 501 (c) of such Code, and shall not be denied status as an organization described

in section 170(c)(2) of such Code, solely because such organization complies with requirements of sections 5, 6, and 7 of this Act.

POWERS OF COMPTROLLER GENERAL

SEC. 9. (a) To carry out his duties and functions under this Act, the Comptroller General shall have the power—

(1) to require, by special or general orders, any person to submit in writing such reports, records, and answers to questions as may be necessary for the proper execution of such duties and functions; and such submission shall be made within such a reasonable period of time and under oath or otherwise as the Comptroller General may determine;

(2) to administer oaths or affirmations;

(3) to require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to the execution of his duties and functions;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Comptroller General and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3);

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, to initiate, defend, or appeal civil actions (including civil actions under section 13(a) of this Act and civil proceedings for injunctive, declaratory, or other appropriate relief) in the name of the Comptroller General for the purpose of enforcing the provisions of this Act, through attorneys in his office or through other attorneys appointed to assist him in carrying out his duties and functions under this Act; and

(7) to formulate general policy with respect to the administration of this Act.

Attorneys appointed by the Comptroller General under authority of paragraph (6) may be paid compensation without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, except that such compensation may not exceed the highest rate payable under section 5332 of such title.

(b) Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Comptroller General, in case of refusal to obey

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a subpena or order of the Comptroller General issued under subsection (a), issue an order requiring compliance therewith. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) No person shall be civilly liable in any private suit brought by any other person for disclosing information at the request of the Comptroller General under this Act.

DUTIES OF THE COMPTROLLER GENERAL

SEC. 10. It shall be the duty of the Comptroller General—

(1) to develop a filing, coding, and cross-indexing system to carry out the purposes of this Act (which shall include an index of all persons identified in reports or registrations filed under this Act) and, in cooperation with the Federal Election Commission, to develop a cross-indexing system of persons identified in registrations and reports filed by lobbyists under this Act with reports filed under section 304 or section 308 of the Federal Election Campaign Act of 1971;

(2) to make copies of registrations and reports filed with him under this Act available for public inspection and copying, commencing as soon as practicable, but not later than the end of the second day following the day of receipt, and to permit copying of any such registration or report by hand or by copying machine or,

at the request of any person, to furnish a copy of any such registration or report upon payment of the cost of making and furnishing such copy; but no information contained in any such registration or report shall be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(3) to preserve the originals of such registrations and reports for a period of not less than five years from the day of receipt;

(4) to compile and summarize, with respect to each quarterly period, the information contained in such registrations and reports in a manner which facilitates the disclosure of lobbying activities, including, but not limited to, information on—

(A) all lobbying activities pertaining to each issue before the Congress; and

(B) the total lobbying activities of lobbyists who share an economic, business, or other common interest;

(5) to make the information compiled and summarized under paragraph (4) available to the public within 30 days after the close of each quarterly period, and to publish such information in the Federal Register at the earliest practicable opportunity;

(6) to ascertain whether any lobbyist has failed

to comply fully and accurately with the disclosure requirements of this Act or regulations prescribed by the Comptroller General under this Act;

(7) to conduct audits, investigations, and hearings, in conformity with the provisions of chapter 5 of title 5, United States Code, with respect to the registrations and reports filed under this Act, with respect to alleged failures to file any registration or report required under this Act, and with respect to alleged violations of any provision of this Act;

(8) not later than one hundred fifty days after the date of the enactment of this Act and at any time thereafter, to prescribe rules, regulations, and forms, in conformity with the provisions of chapter 5 of title 5, United States Code, as are necessary to carry out the provisions of this Act in the most possible effective and efficient manner;

(9) at the request of any Member of the Senate or the House of Representatives, to prepare and submit to such Member a special study or report relating to the lobbying efforts of any person, and for such purpose, if such study or report cannot be prepared from registrations and reports in the custody of the Comptroller General or which will be in his custody within a reasonable time, he may exercise his power under section 6 to

obtain information necessary for such study or report; and.

(10) to furnish assistance, to the extent practicable, to any person who requests assistance in the development of appropriate accounting procedures and practices to meet the recordkeeping and reporting requirements of this Act.

ADVISORY OPINIONS

SEC. 11. (a) Upon written request to the Comptroller General by any person, the Comptroller General shall render an advisory opinion, in writing, within a reasonable time with respect to the applicability of the recordkeeping, registration, or reporting requirements of this Act to any specific set of facts involving such person.

(b) Notwithstanding any other provision of law, any person with respect to whom an advisory opinion is rendered under subsection (a) who acts in good faith in accordance with the provisions and findings of such advisory opinion shall be presumed to be in compliance with the provisions of this Act to which such advisory opinion relates. Any such advisory opinion may be modified or revoked, but any modification or revocation shall be effective only with respect to action taken or things done after such person has been notified, in writing, of such modification or revocation.

(c) Any request made under subsection (a) shall be

made public by the Comptroller General in such form as the Comptroller General deems appropriate. The Comptroller General shall, before rendering an advisory opinion with respect to such request, provide any interested person with an opportunity to transmit written comments to the Comptroller General with respect to such request within such period of time as he shall prescribe.

ENFORCEMENT

SEC. 12. (a) (1) The Comptroller General shall employ his powers to detect any violation or potential violation of this Act.

(2) If, based upon information received by him under this Act or furnished to him by any person, it appears to the Comptroller General that any person has engaged, or is about to engage, in any acts or practices which would constitute a violation of this Act, he shall make such investigation of the apparent violation as he deems appropriate. Any such investigation shall be conducted expeditiously and notice thereof shall be given to the person who is the subject of such investigation unless the Comptroller General determines that such notice would interfere with effective enforcement of this Act.

(3) If, as a result of an investigation under paragraph (2), the Comptroller General determines that any person

has engaged, or is about to engage, in any acts or practices which constitute or will constitute a civil violation of this Act, he shall endeavor to correct such violation by informal methods of conference and conciliation and, if such methods are unsuccessful, he shall endeavor to correct such violation by—

(A) an order requiring such person to cease and desist from activities in violation of this Act and to affirmatively comply with provisions of this Act in such manner as prescribed by the Comptroller General; or

(B) instituting a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, the court shall grant a permanent or temporary injunction, restraining order, or other order; or

(C) referring such violation to the Attorney General.

(4) Before issuing any order under paragraph (3)(A), the Comptroller General shall serve upon such person a complaint and a notice of a hearing on a day and at a

place therein fixed at least thirty days after service of such complaint. The person receiving the complaint shall have the right to appear at such hearing and show cause why an order should not be entered requiring such person to cease and desist from activities in violation of this Act so charged in the complaint, and why such person should not affirmatively comply with the provisions of this Act in such manner as prescribed by the Comptroller General. The testimony in any such hearing shall be reduced to writing and filed in the Office of the Comptroller General.

(5) The Comptroller General may refer any civil violation of this Act to the Attorney General under paragraph (3) (C), if the Comptroller General determines that such referral is appropriate. Upon such a request by the Comptroller General, the Attorney General, on behalf of the United States, may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which such person is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in acts or practices in violation of this Act, a permanent or temporary injunction, restraining order, or other order shall be granted by such court.

(6) In any action brought under paragraph (3) or (5), subpenas for witnesses who are required to attend a United States district court may run into any other district.

(7) Any order issued under paragraph (3) (A) shall become final sixty days after the issuance of such order unless within that time any person aggrieved by such order files a petition for review in the United States Court of Appeals for the District of Columbia. Any party aggrieved by an order granted under paragraph (3) (B) or (5) may, at any time within sixty days after the date of entry thereof, file a petition with the United States court of appeals for the circuit in which such order was issued for judicial review of such order.

(8) The judgment of the court of appeals affirming or setting aside, in whole or in part, any order appealed pursuant to paragraph (7) shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(9) The Comptroller General shall refer apparent violations of section 13 (b) of this Act to the Attorney General.

(b) The Attorney General may not initiate any civil action to enforce the provisions of this Act except upon a referral by the Comptroller General under the provisions of subsection (a). In any case in which the Comptroller General

refers a civil or criminal violation to the Attorney General, the Attorney General shall act upon such referral in as expeditious manner as possible, and shall respond by report to the Comptroller General with respect to any action taken by the Attorney General regarding such violation. A report shall be transmitted no later than sixty days after the date the Comptroller General refers such violation, and at the close of every ninety-day period thereafter, until there is final disposition of the case. The Comptroller General may from time to time prepare and publish reports on the status of such referrals.

SANCTIONS

SEC. 13. (a) Any person who fails to comply with section 5, 6, or 7 of this Act, or with an order of the Comptroller General issued under section 12 (a) (3) (A), shall be subject to a civil penalty of not more than $10,000. In the case of a failure to comply with a final order of the Comptroller General, issued under section 12 (a) (3) (A) each day of continuance of such failure shall be deemed a separate offense. In determining the amount of such civil penalty in any such action, the court shall take into account the degree of culpability, any history of prior failure to comply with section 5, 6, or 7 or an order of the Comptroller General issued under section 12 (a) (3) (A), ability to pay, and such other matters as justice may require. In any action brought under

this subsection for failure to comply with an order of the Comptroller General issued under section 12 (a) (3) (A), the court may also enter a judgment requiring the defendant to comply fully and retroactively with such order.

(b) Any person required to file a registration under section 5, keep any record under section 6, or file any report under section 7 who knowingly and willfully—

(1) fails to file such registration, keep such record, or file such report, or

(2) in connection with any such registration, record, or report, falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry,

shall be fined not more than $10,000 or imprisoned not more than five years, or both.

REPORTS BY THE COMPTROLLER GENERAL

SEC. 14. The Comptroller General shall transmit a report to the President of the United States and to each House of the Congress no later than March 31 of each year. Each such report shall contain a detailed statement with respect to the activities of the Comptroller General in carrying out its duties and functions under this Act, together with recom-

mendations for such legislative or other action as the Comptroller General considers appropriate.

REPEAL OF FEDERAL REGULATION OF LOBBYING ACT

SEC. 15. (a) The Federal Regulation of Lobbying Act (60 Stat. 839; 2 U.S.C. 261 et seq.) is repealed.

(b) All documents, papers, and other information in the custody or control of the Clerk of the House of Representatives or the Secretary of the Senate obtained or prepared pursuant to the provisions of the Federal Regulation of Lobbying Act of 1946 are hereby transferred to the custody and control of the Comptroller General. The Senate and the House of Representatives consent to the transfer of such documents, papers, or other information.

SEPARABILITY

SEC. 16. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 17. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

EFFECTIVE DATES

SEC. 18. (a) Except as provided in subsection (b), the provisions of this Act shall take effect on the date of its enactment.

(b) Sections 5, 6, 7, 12, 13, and 15 shall take effect on the first day of the first calendar quarter which begins more than thirty days after the first rules, regulations, and forms prescribed under section 10(8) become effective.

STATEMENT OF REPRESENTATIVE ROBERT W. KASTENMEIER OF WISCONSIN, MAY 15, 1975 FOR THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS HEARINGS ON LEGISLATION TO REGULATE LOBBYING ACTIVITIES.

Mr. Chairman, I appreciate this opportunity to testify on behalf of the Public Disclosure of Lobbying Act, H.R. 15, which Congressman Railsback and I have introduced in the House and which has been cosponsored by 142 Representatives. H.R. 15 is a necessary and an essential addition to the series of congressional and campaign reforms which have been adopted in recent years to open, modernize and improve the performance of our government.

Lobbying, of course, is sanctioned by the First Amendment to the Constitution as an exercise of "the right of the people . . . to petition the Government for a redress of grievances," and the efforts of organized interests to influence government policy have become an inseparable part of the American political process. Organized interest groups have traditionally had considerable impact on our form of government, and although administrative and legislative decisions have been extensively influenced by lobbyists, this does not necessarily mean that lobbying always represents an unhealthy or objectionable practice. Lobbying does provide a legitimate means for interest groups to present to the government the views of their membership or clients and lobbyists do impart useful, independent information to the executive branch and the Congress in areas where they do have considerable expertise.

As legislators, we all have, at one time or another, benefited from the advice and information given by lobbyists, and, in no way does H.R. 15 seek to interfere with the right of any citizen or interest group from communicating or exercising free speech with government officials.

Where lobbying does pose a grave danger and a menace to honest and good government is when officials in the government, either in the Congress or in the executive branch succumb, for whatever reason, to the overtures made by lobbyists and override the general public welfare in favor of the wishes of a special interest group. Too much of the lobbying that goes on, unfortunately, is veiled in secrecy and involves money. As a result, serious abuses have and do occur. The public, understandably so, largely perceives lobbying to be a corrupt activity which allows special interests to buy favors from the government. One of the important lessons we should have learned from Watergate and its related scandals is the principle that the people's business is best conducted in the open. The secret lobbying with the government should no longer be tolerated and must be ended.

Congress has long recognized the need for lobby disclosure, and lobbying activities have been the subject of continual congressional scrutiny. However, the Federal Regulation of Lobbying Act of 1946 is ineffective and is the main reason the public lacks substantive information about lobbying. While the Act gives the impression that lobbying is under some form of public oversight, there is, in fact, very little. In 1970, for example, a report by the House

Committee on Standards of Official Conduct described the Act as a thoroughly deficient law. A recent report prepared by the General Accounting Office for this Senate Committee on Government Operations stated that although the Clerk of the House and the Secretary of the Senate have responsibility for administering the 1946 Act, they do not have investigative authority to determine the truthfulness of the reports filed with them the right to inspect records or the power of enforcement. Further, although criminal sanctions are authorized by the Act and are the responsibility of the Department of Justice, the Act does not specifically authorize Justice to monitor lobbying activities. The GAO report found that since March 1972, only five matters have been referred to Justice, and records of the Department's Criminal Division's Fraud Section, which has the responsibility for lobbying matters, are not maintained in such a manner that meaningful statistics on lobbying violations prior to March 1972 can be obtained.

Much of the objection to the present Act can be said to center on several issues affecting the determination as to whether a particular individual or organization must comply with the law's disclosure provisions. Although the United States Supreme Court, in its 1954 Harriss decision, upheld the constitutionality of the 1946 Act, the Court adopted a narrow definition of lobbying.

The Court stated that the law applied only to groups and individuals who collected or received money for the principal purpose of influencing legislation through direct contacts with

Members of Congress. This interpretation, based upon the Court's reading of the legislative history of the 1946 Act, gave rise to several major loopholes which enable various organizations and individuals to avoid registering or reporting on spending under the provisions of the 1946 Act. For example, groups or individuals that spend money out of their own funds to finance activities designed to influence legislation are not covered by law unless they also solicit, collect or receive money for that purpose. Further, a number of organizations contend that since influencing Congress is not the principal purpose for which they collect or receive funds, they are not covered by the 1946 Act, regardless of what kind of activities they carry on.

The Court also held that an organization or an individual was not covered by the 1946 Act unless the method used to influence Congress contemplated some direct contact with Members of Congress. As a result, grassroots lobbying, such as organizing letter writing campaigns to Congress, is exempt from any lobbying reporting.

Another difficulty with the present law is that it places the responsibility on each lobbyist or organization to determine what portion of expenditures should be reported as spending for lobbying. Consequently, this situation has resulted in allowing many large and powerful groups to report only small amounts of funds expended for their extensive lobbying operations.

Lastly, the current law only applies to lobbying with the legislative branch, although, as we all know, some of the most important lobbying is practiced on the executive branch agencies and departments.

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The Public Disclosure of Lobbying Act seeks to eliminate the deficiencies in the almost useless present law by broadening the definition of a lobbyist and lobbying activities. A lobbyist is defined as a person who, in any quarterly filing period, receives income or makes an expenditure of $250 or more for engaging in a lobbying activity. H.R. 15 defines lobbying as a communication or the solicitation or employment of another to make a communication with a federal officer or employee in order to influence the policymaking process. The policymaking process means any action taken by a federal officer or employee with respect to any bill, resolution, or other measure in Congress, or with respect to any rule, adjudication, or other policy matter in the executive branch. All officials and employees of the executive branch in grades GS-15 or above are required to report or log their contacts with those outside parties who seek to influence the policymaking process in the executive branch. Lastly, the Federal Election Commission is designated to serve as the administrator and the enforcer of this proposed act.

Mr. Chairman, an effective and responsible government cannot function well without the confidence of its people. Full disclosure of lobbying activities would benefit private citizens by enabling them to better understand the nature of special interest pressures and they would be better equipped to hold public officials accountable for their response to these pressures. Public officials also would gain by lobbying reform since they would, with public disclosure, find it easier to evaluate lobbying pressures and put them in a better perspective. Lobbying reform is long overdue and I urge this Committee to act affirmatively and expeditiously in approving lobbying disclosure legislation.

STATEMENT OF
WILLIAM B. GARDINER
ASSISTANT NATIONAL DIRECTOR OF LEGISLATION
DISABLED AMERICAN VETERANS
TO THE
SENATE GOVERNMENT OPERATIONS COMMITTEE
June 12, 1975

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

The Disabled American Veterans appreciates this opportunity to present our views on S. 774 and S. 815, the proposed lobby reform legislation.

For the information of the Committee, Mr. Chairman, the Disabled American Veterans was chartered by act of Congress on June 17, 1932. The law (P.L. 72-186) which incorporated the DAV provided, in part, that the purpose of the organization shall be: to uphold and maintain the Constitution and the laws of the United States; to realize the true American ideals and aims for which those eligible to membership fought, and to advance the interests and work for the betterment of all wounded, injured, and disabled veterans.

In accordance with our National Constitution and By-Laws, the legislative policy of the DAV is established by the National Convention, and no federal legislation may be sponsored or endorsed by any National officer, or any member of any Department, chapter, or other subordinate unit, on behalf of and in the name of the DAV National Department unless it has been approved by a National Convention or by the National Executive Committee.

The Disabled American Veterans and its legislative officers are currently registered under the Federal Regulation of Lobbying Act, and quarterly reports on all receipts and expenditures in connection with our legislative activities are filed with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with existing law.

In addition, a complete report on DAV activities and financial transactions for each year is filed with the Congress as required by Public Law 504 of the 88th Congress, and the accounts of the organization are audited by the General Accounting Office under provisions of Public Law 90-208.

It is therefore evident, Mr. Chairman, that our concern over some of the more troublesome provisions of the legislation now under consideration by the Committee is not based upon any opposition to full public disclosure of our legislative activities or financial transactions. The DAV, in fact, strongly supports the enactment of reasonable regulations to prohibit corrupt or improper attempts to influence the legislative process.

We are forced to conclude, however, that the scope of S. 774 and S. 815 is so sweeping, broad, and complex that, if enacted in their present form, either of these bills would infringe upon the basic Constitutional rights that the members of our organization fought to preserve.

We are greatly concerned over the extensive reporting and recordkeeping requirements of the bills, which, in our judgement, go far beyond the purported purpose of providing

for the public disclosure of lobbying activities, and would place an intolerable burden upon our legislative efforts to advance the interests and improve the welfare of America's disabled veterans, their dependents and survivors.

The proposed lobby reform legislation calls for comprehensive disclosure requirements pertaining to the activities and finances of lobbyists, of those who employ lobbyists, and of those who solicit others to lobby.

The pending bills define a lobbyist as a person who receives income or makes expenditures of $250 or more per quarter for engaging in lobbying activities. They define lobbying as a communication -- or the solicitation or employment of another to make a communication -- with a federal officer or employee in order to influence the policymaking process.

The policymaking process is further defined as "any action taken by a federal officer or employee with respect to any bill, resolution, or other measure in Congress, or with respect to any rule, adjudication, or other policy matter in the executive branch."

As you know, Mr. Chairman, any law to regulate lobbying which would extend the powers and authority of the government beyond those prescribed by the Supreme Court would be based on the most questionable constitutional grounds. Yet, the essence of the pending bills is to enforce burdensome registration, recordkeeping, and reporting requirements against any "person" who attempts even indirectly to influence the policymaking process.

Furthermore, the language of the proposed Lobby Reform legislation is so all-inclusive and ambiguous that it might be construed to require all 268 DAV National Service Officers to file a Notice of Representation and submit a report on all contacts with the Veterans Administration for each of the 143,863 veterans they represented before the rating boards last year.

Moreover, Mr. Chairman, all 49 State Departments and 2,062 local Chapters of the DAV would be subjected to the burdensome registration, recordkeeping and reporting requirements if they publish a magazine, newsletter or bulletin informing their members of pending legislation, or encouraging them to communicate with the Congress on matters affecting their veterans' benefits.

This requirement seems discriminatory indeed, as both S. 815 and S. 774 exempt from the definition of lobbying a communication or solicitation by a newspaper, magazine or other periodical distributed to the general public. Voluntary membership organizations such as the DAV which publish such communications or solicitations in their own newsletters or magazines are, however, subject to the provisions of these bills.

Even more discriminatory, in our judgment, are the provisions of S. 815 and S. 774 which would require a voluntary membership organization to report - and thus make public - the names and amounts of dues paid by its members who contribute more than $100 in dues, fees, or other contributions during any calendar quarter, or during that period combined with the three immediately preceding calendar quarters.

In this connection we wish to point out that there are two types of membership in our organization. Article XI of the DAV National By-laws provides that annual membership dues, unless otherwise provided for by Chapter or Department By-laws, shall be $5.00 for the membership year, which starts on July 1 and closes the following June 30.

Section 11.8 of Article XI provides that any person eligible to membership may become a Life Member and shall have all the benefits and privileges of DAV membership for as long as he may live, without the further payment of any tax, fee, dues, or assessments whatsoever.

Paragraph 5 of this section also specifies that:

> "On and after July 1, 1975, Life membership fees will be as follows: Those eligible who have not attained the age of 41 before July 1 of the current year may become a Life Member upon payment of $125.00 to the Life Membership Fund through National Headquarters; those who are between the ages of 41 and 60, upon payment of $100.00; those who are between the ages of 61 and 70, upon payment of $75.00; and those who have attained the age of 71 or over on July 1, 1975, upon payment of $50.00."

The DAV would therefore be required to report the names of all Life Members whose dues exceed $100 because of the date of their birth. As these members have exactly the same benefits and privileges as all other members of the organization, we contend that this requirement would violate their constitutional rights and deny them equal protection under law. Furthermore, there is a strong possibility that the publication of their names would create the false impression that -- unlike other members of the DAV -- their dues alone were of special significance in financing our legislative activities.

Additionally, Mr. Chairman, the extensive registration and reporting requirements of the pending legislation would require each lobbyist to file with the Federal Election Commission:

1) A notice of representation identifying the issues with which he expects to be concerned, those whom he will seek to influence, the form of communication to be used, and whether the communication will be for or against a particular measure or action;

2) Quarterly reports identifying the subject matter of each oral or written communication which expresses an opinion or contains information with respect to the policymaking process made by the lobbyist to any federal officer or employee, or to any committee, department or agency;

3) A copy of any written communication used by the lobbyist during the period to solicit other persons to lobby, an estimate of the number of such persons to whom such written communications were made, and an estimate of the number of such persons who engaged in lobbying; and

4) A description of the procedures, other than written communications, used by the lobbyist during the period to solicit other persons to

lobby, an estimate of the number of such persons solicited, an estimate of the number of such persons who engage in lobbying, the specific purpose of the lobbying, and the federal officers or employees to be contacted.

In our view, the establishment of such far reaching and burdensome registration and reporting procedures would have the effect of creating a prior restraint on the right of American citizens to exercise their First Amendment freedoms. Furthermore, we fail to see what bearing the collection of this voluminous information would have in enabling the Congress to determine whether or not an attempt was being made to unduly influence the policymaking process.

It is also our firm belief that compliance with these unreasonable and excessive reporting provisions would be impossible. For example, there is no conceivable way in which the registered lobbyists of the DAV could determine and report the identity of all persons who might respond to a request contained in a speech, the DAV Magazine, or in our Newsletter to contact their Congressional representatives in behalf of the DAV position on pending veternas' legislation.

In summary, Mr. Chairman, the Disabled American Veterans strongly supports the enactment of a reasonable law to correct the abuses of the existing Federal Regulation of Lobbying Act and prohibit corrupt or improper attempts to influence the legislative process. We feel, however, that

S. 774 and S. 815 go far beyond this necessary purpose; and if enacted in their present form, would severely restrict the individual members of the DAV in communicating with their Congressional representatives on matters affecting their veterans' benefits.

We must therefore oppose these unduly restrictive proposals, and we respectfully request that neither S. 774 nor S. 815 be favorably reported by the Committee on Government Operations.

Statement of the

ASSOCIATION OF DESK AND DERRICK CLUBS OF NORTH AMERICA

Before the
Committee on Government Operations
United States Senate

October 28, 1975

On

Legislation to Reform the Lobbying Act of 1946

The Association of Desk and Derrick Clubs of North America is an educational, nonpartisan, not-for-profit organization composed of 90 member clubs throughout the United States and Canada, with a national membership of over 6,600 women. The Association's business office is located in Tulsa, Oklahoma.

The Association was founded in July of 1951 in New Orleans, Louisiana, and its purpose is "to promote among the women employed in the petroleum and allied industries through informative and educational programs, a clearer understanding of the industry which they serve, to the end that the enlightenment gained thereby may increase their interest and enlarge their scope of service." Included in the Association membership are women executives, geologists, editors, draftswomen, secretaries, stenographers, auditors, accountants, bookkeepers, clerks -- and any woman actively engaged in the petroleum and allied industries, as defined in the Association bylaws, is eligible for membership.

The Association would like to register with this Committee its views on legislation pending before the Committee to amend the Federal Lobbying Act of 1946. This statement is filed on behalf of the member clubs located in the United States only, and not on behalf of the member clubs located in Canada.

The Association does not engage in lobbying as defined in the 1946 Act, and as interpreted by the courts since its enactment. We endeavor, by way of our Public Relations Committee, to inform the club presidents and through them, the entire membership, of legislative matters of interest to the petroleum and allied industries, and to urge our members to express their individual views to their Senators and Representatives on such matters.

It is our understanding that continuation of such activities, should this legislation be enacted, would require that the Association register as a lobbyist. It is the belief of the Association that such a requirement would negate to a considerable extent the educational activities in which we engage. Knowledge of the impact of legislation and executive actions on the petroleum and allied industries is vital to us, not only as members of the Association, but obviously in our work as well. Should it become necessary for the Association to curtail these informational activities, the net result would be that our members would be far less informed of activities in the Congress and in the Executive Branch which would have a tremendous impact upon the industry with which we are associated.

This would occur because the great majority of our members perform Association or local club work on their own time, and not as part of their regular work duties. If our Public Relations Committee members, who are now performing the legislative work mentioned earlier, were required to account meticulously for every hour of work they devote to these activities, and account scrupulously for the cost of every copy made, and letter mailed -- to say nothing of requiring our business office employee to keep similar accounts -- their activities in this regard would very likely cease. Further, because it is not clear in any of the bills before this Committee whether or not a "status report" and description of legislation would be construed as "lobbying" (absent the urging to contact Senators and Representatives), it is likely that the Public Relations Committee would be precluded from including that type of information in its mailings and reports to our membership.

For a further discussion of the question of "indirect lobbying", we would respectfully refer you to pages 8-10 in the testimony of Mr. Milton A. Smith of the United States Chamber of Commerce, wherein he comments on this issue. The Association endorses these portions of Mr. Smith's testimony.

The record-keeping and reporting requirements contained in the legislation before this Committee are, in the view of the ADDC, extremely onerous and burdensome, not only for our Association, but for all other organizations similar to ours. We fail to see how the compilation of such items as postage spent for a mailing can be of interest to anyone who is not conducting a survey on rising postal costs.

Nor can we understand the necessity to require publication of our membership lists, which would be required by the legislation before this Committee. It seems to us that publication of such information would violate the First Amendment guarantee of freedom of association as spelled out in Appendix A to Mr. Smith's testimony (cited earlier).

In balance, it is the belief of the Association of Desk and Derrick Clubs of North America that enactment of S. 774, S. 815, S. 2068, S. 2167, or S. 2477, in substantially the form introduced, would indeed have the "chilling effect" described in Mr. Smith's statement. Prohibiting or limiting the flow of legislative and executive branch information to members of organizations such as the ADDC could very well result in a less-informed electorate, as far as issues are concerned. We feel certain that such a result is not intended by this Committee.

NATIONAL CAPITAL OFFICE
NON COMMISSIONED OFFICERS ASSOCIATION of the UNITED STATES OF AMERICA
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November 3, 1975

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WASHINGTON, D. C. 20510

Honorable Abraham A. Ribicoff, Chairman
Senate Committee on Government Operations
3306 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The NON COMMISSIONED OFFICERS ASSOCIATION of the USA (NCOA) requests that the following statement be placed in the record of hearings on S. 2068, S. 2167, and S. 2477.

The NCOA is the largest enlisted military association in the world, representing more than 150,000 noncommissioned and petty officers - career enlisted personnel - of the U.S. Armed Forces, active, retired, reserves, and National Guardsmen. It is a nonprofit, social, benevolent, fraternal, and patriotic organization chartered in the State of Texas and has over 350 chapters in the United States and foreign countries.

The NCOA applauds the intent of Congress to reform the Lobbying Act; however, the Association believes that S. 2068, S. 2167, and S. 2477 are not the solution. Although the proposals may preclude the continuation of certain unethical lobbying practices, they do contain discriminate, burdensome, and deterring provisions. Frankly, the NCOA feels that the enactment of certain provisions of the bills would not only penalize those who are abiding by existing regulations, but would cause undue burdens, higher cost factors, and unrealistic reporting requirements.

The NCOA also believes that enactment of the bill(s) would violate certain constitutional rights, and will no more stand the test of the federal courts than the present act. But our objective is not to debate constitutional privilege. Instead, we would prefer to call the panel's attention to the discriminate, burdensome, and deterring provisions mentioned earlier.

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First of all, there are sections relating to "voluntary membership organizations." The definitions, as provided, identify this group as:

(a) - "An organization composed of persons who are members thereof on a voluntary basis" (S. 2477),

(b) - "An organization composed of persons or individuals who are members thereof on a voluntary basis and who, as a condition of membership, are required to make regular payments to the organization (S. 2068, S. 2167).

Certainly these are ambiguous. They very well might compare to a statement that flatly declares "a democrat is a democrat and a republican is a republican" without considering that each group has its conservatives, liberals, and moderates.

The NCOA cannot rationalize how it can be classified in the same light as that of a union, for example, or even a nonprofit organization that concentrates its full or major resources on influencing legislation. To "throw" all voluntary membership organizations into one pot is blatant discrimination. If for no other reason, there is certainly a difference between public and restricted membership organizations, and an equal difference between certain types of restricted organizations.

In another area, we also note that the press, et al., is exempt from the provisions dealing with "lobbying communication" and "lobbying solicitation," but publications distributed by "voluntary membership organizations" are not. Again, the Association cries "discrimination." Radio, television, and newspapers certainly tend to influence legislation more so than the publications distributed by "voluntary membership organizations." To prove our point, we need only to peruse the CONGRESSIONAL RECORD.

What is most unrealistic are the requirements[1/] for an organization to make an estimate of the total number of persons solicited in connection with each issue, and/or an estimate of the number of persons that communicated with congressional members/employees as a result of the solicitation. Unless the solicitation was deliberately planned and two-way communications were established between organization and member, it would be impossible to even estimate the numbers involved.

1/ - Requirements contained in S. 2167, Section 105(g) and S. 2477, Section 7(d).

As for reporting procedures, we can only shake our heads in disbelief. The NCOA would be, as will many others, forced to hire additional employees for the primary function of maintaining records and preparing and submitting required reports. This then would increase the NCOA's annual budget for lobbying purposes. At present, bookkeeping records are maintained in San Antonio, Texas, and not in Washington, D.C. To meet obligated deadlines, considerable expenses would be incurred to affect itemized and estimated reporting procedures.

The NCOA can see only detrimental effects on organizations that use limited membership funds to represent their members relative to congressional issues. The proposed legislation would tend to discourage honest representation by groups whose benefits include "legislative liaison" as part of a package, and not necessarily a major item in that package.

We urge this panel to reject the bills before it, or any proposal that contains such discriminate and inequitable procedures to regulate lobbying.

Lobbying is an integral and often constructive part of the legislative process, both as a source of information that Congress and other officials of the government must have in the enactment of sound laws, and as an outlet for the aims and desires of special interest groups. If these important segments of the national life - businessmen, workers, farmers, doctors, military personnel, veterans, etc. - are denied access to government, or consistently frustrated in their legislative goals, there could be a strong tendency to form other political parties. The consequences could result in further political fragmentation of our present party system.

Respectfully,

C. A. "Mack" McKinney
Director of Legislative Affairs

CAM/glk

The Wilderness Society
1901 Pennsylvania Avenue, N.W.
Washington, D.C. 20009

TESTIMONY SUBMITTED BY THE WILDERNESS SOCIETY
ON S. 774, S. 815, S. 2068, S. 2167 AND S. 2477
AND OTHER LOBBYING REGULATORY BILLS
BEFORE THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS
AT WASHINGTON, D.C.

November 4,5, & 6, 1975

My name is Ernest M. Dickerman, representing The Wilderness Society, a national conservation organization of some 100,000 members. The Society is primarily concerned with the preservation of natural areas both of land and of water, but also is involved in many other environmental issues. We are testifying at this hearing (by invitation) because of the severely restrictive affect which we believe S. 2477 and other proposed bills would have on the freedom of the citizens of the United States to communicate effectively with their representatives in the Congress and with their employees in the executive branch of the government.

S. 2477 and each of the several related bills are long and complex, with many detailed provisions. We do not propose to take up these detailed provisions individually, but rather to discuss the bills collectively as they would affect the efforts of citizens and their organizations to communicate their views to the Congress and to the bureaus comprising the executive branch of the government. We think there are serious questions to be raised as to the wisdom of the provisions of these several bills and as to their constitutionality. As we read these several bills, for the most part they impose an extensive system of reports and an even more extensive system of cost-keeping upon any individual

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or organization subject to such legislation if enacted. We fail to see where the accumulation of virtually endless amounts of data is going to improve the practice of lobbying, or is going to facilitate the communication of citizens with their government. On the contrary, what these bills do is erect a barbed wire entanglement through which the citizen must force his way in order for him or his voluntarily chosen spokesman to exercise his constitutional right to speak to his Congressional representatives or government employees.

This brings us to the first point which we would like to make.

Elimination of Specific Bad Practices is the Proper Objective

Presumably there is a feeling in some quarters that lobbying involves some practices which are bad or evil and therefore should be restrained by law. If this is so, then it would seem that the proper approach would be to draw legislation which is specifically aimed at such bad practices. Other witnesses have identified a number of undesirable practices and suggested that the appropriate action would be to draft legislation which would control them.

However, instead of bills aimed at particular objectionable aspects of lobbying, most of the bills before this subcommittee do not deal with any specific questionable practices but simply require an extensive series of reports -- and extensive record keeping by lobbyists -- which imposes an onerous burden on almost anyone who seeks to exercise his constitutional right of petitioning the government. If there is any subject in the world on which the members of the Congress are experts, it is the subject of lobbying. There is no need to accumulate endless data in order for the Congress to know what is going on and to determine what lobbying action may be against the public interest.

Accordingly, the first point we would like to make is that any new legislation should be directed specifically to curbing recognized bad lobbying practices. Unfortunately that is not the nature of the bills before this committee.

What Will Be Gained By S. 2477?

The second question we would raise is, what objective is expected to be accomplished by the enactment of S. 2477 or any related bill? Or phrased a little differently, who is expected to benefit from the accumulation of all the data? Some suggest that the big benefit will come from the full light of day being shed on lobbying by reporting who is doing the lobbying and how they go about it.

Such a comment implies that little or nothing is known about lobbying. On the contrary, there are few subjects on which more is known -- and particularly is known by the Congress of the United States. More information is not needed to determine what may be necessary in the way of regulation. On the contrary, the very mass of detailed information required to be accumulated will probably cast more shadow than light. The extensive, frequent and detailed reports called for by most of the bills offered practically guarantees that careful attention is not going to be given them. A great deal of time and energy will be required of the thousands of persons subject to this legislation to prepare the reports and to systematically accumulate the cost data necessary to the reports. What purpose will be served other than to create a new bureauacracy who will make the supervision of this reporting their life work at the expense of the taxpayers?

Who Are The Lobbyists?

Despite the protestations of many people to the contrary, including numerous statements in the Congressional Record and even in the findings section of some of the bills, the impression seems to prevail that lobbying is inherently evil and being evil must be minutely scrutinized. Unfortunately the popular view of lobbying is that it is evil and the more sharply it can be controlled the better. We are confident that the Congress, who is the target of much lobbying, knows better.

The popular conception still is that lobbying is carried on exclusively by sinister corporations bent on their own gain and ready to engage in every form of skullduggery and collusion to achieve their ends. It is undoubtedly true that most corporations have their own interests and are prepared to exert themselves accordingly, but for the most part their lobbying is conducted openly and is well known to all parties on both sides of any issue. Extensive reporting as proposed by S. 2477 is not going to reveal anything not already widely known. This gets us back to a point made earlier: To the extent that the Congress or other competent parties are aware of bad practices associated with lobbying, let's have new legislation directed specifically at such unwanted practices. But imposing an onerous burden of detailed reporting on all lobbists is not going to eliminate such practices -- and it might even be unconstitutional.

It is pertinent to consider who is doing the lobbying in this day and time. Years ago is was almost exclusively the province of big corporations or of private individuals who stood to gain or loose substantial amounts of money in consequence of the passage or defeat of specific legislation. The voice of the people was seldom heard through any lobbyist. But over the last fifteen years or so lobbyists representing the people, representing the public interest as distinct from private interests, have increasingly appeared before the Congress and the government agencies. These lobbyists, usually employees of citizen organizations,

are not seeking any direct benefit for their organizations nor for their members, but are concerned with promoting the general welfare, the public good as they see it. The population of the nation has grown so greatly that is is practically impossible for the people to make themselves heard directly by the Members of Congress in an effective way. Just as the Congress are the elected representatives of the people, so there have developed private representatives of the people who intercede on behalf of the people to the elected representatives. These private representatives, operating usually through voluntary membership organizations of many different sorts, are experts in their fields, are on the scene continually, and understand the legislative process. One of the most encouraging signs in the functioning of the American political process has been the increasing degree to which these private representatives or "public interest" lobbyists have been making the wishes of the voters effectively known to the Congress. In consequence, the Congress has been receiving an increasingly more complete and truer picture of the impact of proposed legislation and of the strengths and weaknesses of particular bills.

Most of these public interest organizations, regardless of their political philosophies or particular subjects of concern, are financially poor and understaffed. To have to expend a significant amount of their very limited time and money in compiling detailed records of a normal, legitimate activity and preparing extensive, frequent reports can be such a heavy burden as to seriously interfere with their ability to perform their functions of representing the people before the Congress. As believers in the American political system, we should all be seeking to encourage the expression of the will of the people through such organizations, rather than proposing to impede such public expression by enactment of such bills as S. 2477.

Bribery

As we have had occasion to read some of the statements made concerning the regulation of lobbying we have been impressed by the frequency with which the matter of bribery or attempted bribery has been mentioned as an aspect of lobbying which needs to be more tightly controlled. S. 2477 and companion bills seem to rest to a substantial degree on the idea that detailed reporting of all contributions of any sort to legislators will be largely eliminated by requiring lobbyists to state in their formal reports every contribution which is made. There is no basis for such an assumption. Either no lobbyist in his right mind is going to report any contribution large enough to influence a legislator's vote or in those cases where there is temptation to make such a contribution it will not be made by any registered lobbyist but by others not subject to the lobbying laws. So why try to control this sort of activity by a compulsory reporting process?

There are already extensive anti-bribery laws on the books. If there are loopholes in the present bribery laws, then let's have new legislation aimed at tightening them. Let's not pretend that by requiring the filing of a lot of official reports in the guise of regulating lobbying that bribery by the few individuals tempted to do so will be greatly reduced.

The G.A.O. Report On Lobbying

We have had occasion to read the report of the General Accounting Office to the Senate's Government Operations Committee on the operation of the current Federal Regulation of Lobbying Act -- surprisingly less than 20 pages long. It is an illuminating document -- not so much because of its account of failures to report by registered lobbyists, of the frequency of incomplete reports being filed, and of late reports, but because of the lack of interest which it reveals on the part of practically everyone in the reporting process. The present Act has been on the books since 1946 -- almost a full 30 years. The

report indicates that no pressure is applied by the Congress or anyone else to seek full compliance with the Act. There clearly is no use made of the data which is reported. The questions arise, who wants this data, of what use is it? Yet, today we have before the Congress more than half a dozen bills which not only would perpetuate but vastly enlarge the reporting of data in which no interest has been shown after nearly 30 years of continuous reporting.

Someone will probably apologize for this utter lact of interest in the reports by citing the incompleteness of the data. That puts the cart before the horse. Rather the data is incomplete because no one is interested enough to see that the reports are complete and filed on time as required by law. Criminal sanctions are authorized by the Act, so that if the proper authorities cared, adequate reports would be filed and on time. In the face of this 30 year record, why is anyone proposing today that even longer reports on the same subject should be required?

The Executive Branch

Several of the bills before this committee make the executive branch of the government subject to their provisions. We doubt very much whether the application of these provisions to the executive departments and agencies will have any measurable effect on the decisions made or policies adopted by them.

We suggest that if the Congress wants to increase the receptivity of these departments and agencies to a wider range of viewpoints and public needs that limitations be placed on the employment in policy or decision-making positions of individuals immediately previously in the employ of industries directly affected by the policies and decisions. As a generalization, such individuals cannot be expected to let the public interest dominate their thinking. If one asks where are technically competent people to be obtained

for sensitive government positions if not from related industry and one's answer is they cannot be obtained elsewhere, then presumably we will have to continue to do as best we can under the present conditions. But the first answer remains: merely requiring that persons making calls on government employees be subject to reporting procedures as to who was called on and for what purpose is not going to significantly affect the decision-making. We see no benefit to be gained by covering the executive branch in any lobby regulatory act and urge that such provisions be dropped from any final bill.

Registration of Lobbyists

We recognize some merit in the registration of those who lobby for hire for other persons or organizations, as distinquished from those who lobby for themselves or for the organization by which they are employed whether a private corporation or a public interest organization. The latter consistently identify themselves; but this is not true of the hired lobbyist. That it should be a matter of public record whom the hired lobbyist is representing and the legislative subjects in which he is interested makes sense. As we see it, the law does not need to go beyond this public identification of the hired lobbyist through a registration process.

Conclusion

There is nothing more natural, normal and human than lobbying. As long as the stakes are high, as they are with much Congressional legislation, there will be lobbying and rightly so. What is needed is not to restrain and inhibit lobbying by such arbitrary and artificial obstacles as S. 2477 and other bills would impose. Rather, what is important is that all points of view be heard by the legislative decision-makers. The more completely the full range of opinions

and facts can be presented to the Members of Congress, the sounder can be the judgement of those members in drafting legislation and in voting on bills. Let's not impose on the American system of government the needless burdens contained in such bills as S. 2477, S. 815, S. 2068, etc.

Thank you, Mr. Chairman.

STATEMENT
OF
NATIONAL ASSOCIATION OF MANUFACTURERS
ON
S.2477,
"THE LOBBYING ACT OF 1975"
SUBMITTED TO
THE SENATE GOVERNMENT OPERATIONS COMMITTEE
NOVEMBER 14, 1975

The National Association of Manufacturers, as representative of over 13,000 manufacturing businesses, large, medium and small, located throughout the United States, has testified on May 15, 1975 before the Senate Government Operations Committee, on S.774 and S.815. Some of the problems which we foresaw at that time have been resolved in S.2477, and we would like to commend the Committee and its staff for the arduous efforts spent drafting legislation to replace the vague and inadequate current lobbying law.

As we testified on May 15, 1975, NAM is wholeheartedly in favor of a new lobbying law which will be specific, effective (but not unduly burdensome), and lacking in constitutional defect. S.2477 is further along the road toward achieving these goals than its predecessors S.815 and S.774. For example, the new bill importantly provides an exemption for individuals who petition the government for a redress of grievances. It eliminates some unnecessary duplication of efforts in reporting and recording, such as when organizations have their own employees (and not independent contractors) lobby. The efforts of such employees will be reported and recorded by the lobbying organization, without needless duplication by the employee. These are definite improvements. We do find some difficulties with S.2477, however, and believe our comments may prove to be of some assistance to the Committee.

EXEMPTIONS FROM THE DEFINITIONS OF LOBBYING AND LOBBYIST

Section 4(d)(6) of S.2477 exempts from lobbying those communications or solicitations made through the dissemination, in the normal course of business, of any news, editorial news, periodicals,etc., published as a customary practice for distribution to the general public. Why are regular pubications such as newsletters to members of an organization not a part of this exemption? What is the substantial justification for denying these newsletters or regular publications the same freedom of press that newspapers have? We suggest that the exemption be expanded to cover such publications.

We would also like to add that an exemption should be provided for those communications which are in response to official requests for information. Furthermore, there is no present exemption for communications with the Comptroller General with respect to the bill (or "act" upon passage) or any regulations promulgated thereunder. This would appear to be a necessary and worthwhile exemption.

We would like to ask why state and local officials and organizations have been excluded from the definition of "lobbyist", since they, along with foreign governments, constitute some of the major lobbying forces in Washington.

REGISTRATION

S.2477 has properly recognized that certain detailed facts are impossible to ascertain at the filing of a registration statement. S. 2477 has more practically sought the identification of the "subject matter" of planned communications on the registration statement, with the identification of particular bills which the lobbyist sought to influence coming at a more feasible time, at the time of reporting. We compliment this improvement.

Our major problem with the registration section, however, lies with the compulsory membership disclosure requirements.

VOLUNTARY MEMBERSHIP ORGANIZATIONS:
SECTIONS 5(a)(3) and 5(a)(4)

In the area of voluntary membership organizations, we find an inconsistency between the bill's descriptive summary as given by Senator Ribicoff, and the specific wording of the bill itself. The summary states that a voluntary membership organization must put on the registration statement: "an approximate number of members, as well as a description of procedures the voluntary membership organization follows in establishing its position on particular issues." The bill itself, in section 5(a)(4), requires: an approximate number of members, and a description of the methods by which the organization decides to engage in lobbying.

NAM believes that the public is far more interested in knowing how the substantive policy decisions (whether the organization is for or against a particular issue) are reached; the decision to lobby is a procedural matter of far lesser significance. Accordingly, we recommend that the wording in the bill be changed to read in accordance with the intent expressed in the summary.

A voluntary membership organization must also identify each organization from which it received income for lobbying, as well as each individual who contributed 5% or more of the organization's total income for lobbying. (Section 5(a)(3)). We must ask what is the compelling and overriding purpose, the substantial justification (which is the accepted standard of review in First Amendment cases) for infringing the members rights to freely associate?

In our previous testimony we dealt with the issue of compulsory membership disclosure, and we refer you to that argumentation. The NAACP cases were offered as illustrations of instances where compulsory membership disclosure was held unconstitutional. We must emphasize that the Supreme Court has specifically held that whether beliefs are religious, cultural, political, or economic, the members have a right to be secure in their associations. 1/ That security is lost in S.2477; the inhibiting effect this requirement could have upon prospective members of all types of voluntary membership associations is quite real. We recommend its deletion.

POWERS AND DUTIES OF COMPTROLLER GENERAL

Under S.2477, the Comptroller General has the power to institute a civil action for relief, including a permanent or temporary injunction, a restraining order, or any other appropriate order in the U.S. District Court for the district in which the person against whom such action brought is found, resides or transacts business. We believe granting civil litigative authority to the Comptroller General may raise a severe constitutional question coming under the heading of "Separation of Powers". Enforcement powers have always resided in the Executive Branch, and not in legislative offices or agencies. GAO is a legislative office specifically excluded in this bill from the definition of "executive agency." The issue of whether a legislative office can carry executive functions of enforcement was discussed in a recent case dealing with powers of the newly created Federal Election Commission:

1/ N.A.A.C.P. v. Alabama, 357 U.S. 449(1959); Griswold v. Connecticut, 381 U.S. 479(1965).

> "Indeed, some of the provisions--for example, those conferring civil enforcement and candidate disqualification powers on the Commission, raise very serious constitutional questions." Buckley v. Valeo, 519 F.2d 821, 892 (1975). Emphasis supplied.

In Buckley, the U.S. Court of Appeals held the issue was not ripe for review since no one yet had been joined in a civil enforcement action initiated by the Commission. Yet the controversy was predicted, and should be dealt with now.

There is no "Separation of Powers" problem with respect to the Commissions's power to issue advisory opinions, however. The U.S. Court of Appeals in the Buckley case has held that there is no general constitutional barrier that would prevent a legislative agency from informing the public as to its interpretation of the statutory provision it must administer. 2/ NAM believes that the "Advisory Opinion" section is a necessary and worthwhile provision, since the bill is complicated and will most certainly give rise to a multitude of questions. We would only suggest that the protection afforded to those who seek an advisory opinion of the Comptroller General and in good faith rely upon it should be expanded to cover all those "similarly situated" who also rely in good faith upon such an opinion. Also, those seeking an advisory opinion should be immunized during the pendency of the request.

With regard to the duties of the Comptroller General, Sections 5, 6, and 7 of S.2477 give implied authority to the Comptroller General to add other substantive registration, reporting and recording requirements.

2/ Buckley v. Valeo, 519 F.2d 821, 893.

We are opposed to such a broad, open-ended, and unchecked grant of authority. NAM believes that the substantive requirements should be limited to those set forth in the bill itself, and the Comptroller General should only provide the procedural mechanisms for the bill's implementation (i.e., prescribing the format of registration statements, and reports etc., but not the content).

Under Section 10(4)(B), one of the duties of the Comptroller General is to compile and summarize information on the total lobbying activities of lobbyists who share an economic, business, or common interest. We believe that this provision could present the public with an inaccurate picture. We at NAM know from experience that companies in the same industry do not always have the same position although both may lobby on the same matter. This provision is particularly unnecessary since the Comptroller General is already authorized to compile information on all activities pertaining to each issue before the Congress (Section 10(4)(A)).

Under Section 10(9), the Comptroller General is authorized to initiate investigations upon the request of any Member of Congress, and to prepare "a special study or report" by obtaining information beyond that required on the registration statement or in the reports filed with the Commission. We believe that this section poses a real threat of harassment. It allows the Comptroller General to search all records under the guise of "preparing a study". There are no safeguards to prevent unwarranted abuse. This provision could place innocent persons under a "shadow of guilt", subjecting them to undeserved negative publicity. We believe that, at the very least, the request for the investigation should emanate from a committee of Congress

rather than just one member. The present statute delineating the powers of the Comptroller General (31 U.S.C.A. §53(b))may serve as a guide.

Section 6 on (Records) is another example of where the Comptroller General is given a practically unlimited power to conduct investigations:

> Such records shall be subject at any time, or from time to time, to such reasonable, special, periodic, or other examinations by representatives of the Comptroller General as the Comptroller General deems necessary for the effective implementation of this Act. Emphasis supplied.

Section 6, along with Section 10(9), would allow "fishing expeditions" by the Comptroller General at any time, for however long. We believe that the Comptroller General's ability to schedule numerous audits "or other examinations" (whatever this means), or to investigate freely under the guise of compiling a "study or report", should be made subject to judicial challenge on the basis of abuse of discretion. And again, all references to reports and records containing "what the Comptroller General deems necessary" should be stricken from the bill; the Comptroller General must not be given the open-ended power to in effect legislate new substantive requirements.

EXECUTIVE BRANCH COVERAGE

As we stated in previous testimony, NAM believes that in order to have a bill that is workable and not overly burdensome, the coverage should be limited to activities which effect, or attempt to affect, the disposition of issues before the Congress. References throughout the bill extending coverage to include actions designed to affect non-legislative matters should be deleted. Sections 3(9),and 3(10)(B), defining "influence" and "issue before the Congress" are two such overbroad references; they should be limited

to attempts to influence legislation. Section 4(c)(2) defining lobbying solicitations also should be limited to attempts to influence legislation. Section 3(11)(A) defining "issue before the Executive Branch" should be deleted. In short, communications or solicitations with members of the Executive Branch should only be covered if they are undertaken in order to influence the outcome of legislation, and, the statement of purposes section in the beginning of the bill should be clarified to reflect this more feasible and practicable approach.

Deputy Attorney General Tyler testified before the Government Operations Committee on May 15, 1975, and Deputy Assistant Attorney General Keeney testified on November 4, 1975, that the Justice Department believes that the scope of this lobbying bill should be confined to lobbying of the Legislative Branch, except to the extent of approaching Executive Branch officers or employees to influence the legislative process. We agree.

SOME OTHER PROBLEMS AND A FEW SUGGESTIONS

1. The term "affiliate" is not defined in S.2477, yet it appears in several sections: 4(f)(3),4(g)(3),and 7(c)(2). Senator Ribicoff's examples of who would be a lobbyist utilize "affiliates" synonomously with "member" companies of a trade association":

> "10. A national trade association directly communicates with Congress only when it wants to know the status of certain bills, but on four occasions it writes letters to the 50 companies that are members of the trade association to write their own Congressmen in opposition to a particular bill pending before Congress. This solicitation by a trade association of more than 12 affiliates means it is a lobbyist.

We find no fault with the fact that solicitations of more than 12 members of a trade association will make the organization a lobbyist. But to use the word "affiliate" synonomously with "member company" could create a distinct problem under other sections of the bill. For example, in §4(g)(3) it states:

> For purposes of this Act--if any organization which is a lobbyist with respect to any issue. . .requests, urges, or requires an affiliated organization to make any lobbying solicitation with respect to that issue, any such lobbying solicitation made by such affiliated organization shall be treated as made by the other organization.

Section 4(9)(3) read together with §7(c)(4) (requiring reporting of the total expenses incurred on behalf of the organization by other persons which were not, and will not be reported by such person) and 7(d)(5) (requiring reporting of the total number of persons solicited by such lobbying solicitation. . .) would require NAM to report on the activities of our 13,000 member companies. For us to have to keep track of what our members are doing in response to our solicitations is an impossible task. In addition, NAM has a formal affiliation with some 300 independent trade associations through the National Industrial Council (NIC). It is a frequent occurrence that these affiliates of the NIC will be urged to independently contact their membership concerning a particular legislative proposal. Again, for us to have to report their actual response to the solicitation would be burdensome in the extreme, although we have no objection to reporting the fact that we wrote to 300 members of the NIC soliciting their aid.

We suggest placing a definition of affiliate in the bill which would require some degree of control over the affiliated organization before the registrant would be required to report on the activities of these affiliates.

2. In Section 7(f), "wherever a lobbyist is required under subsection (b), (c), or (d) to identify an issue before Congress, the identification shall include, where applicable, the bill or other identifying number, and what position the lobbyist took on such issue, and shall be made in such detail as shall disclose the specific matter or aspect of such issue with respect to which the lobbyist engaged in the lobbying activity concerned. This section requires too much detailed information, imposing an onerous burden upon the lobbyist. It could require lobbyists to state whether they were for or against each specific section of a bill, as well as every amendment, no matter how procedural. We suggest that the lobbyist should only have to report the identity of the bill, where applicable, and the position taken on it. Such information is clearly sufficient, and much more reasonable than requiring "every aspect" to be described. The paperwork which this section alone could create would be endless.

3. Under the Registration Section 5(c), organizations which are "lobbyists" within the meaning of §4(f) must name on the registration statement officers, directors, and employees whom the lobbyist expects to make one or more oral lobbying communications; and on the reports there must be those same persons

who in part made one or more oral lobbying communications. (Section 7(c)(2). We believe that these sections could present a misleading picture: An organization which utilizes one person to make 535 communications is obviously going to appear far less active than an organization which has 12 employees make one call apiece. We suggest a substitute, requiring in the registration statement and in the reports the names of those who make twelve or more oral communications with respect to the same issue.

Using "one or more" oral lobbying communications as a criterion could lead to difficulty when it comes time to report the total expenses incurred during the period in connection with all the issues before Congress with respect to which the organization engaged in lobbying. (§7(c)(4)). How to allocate a portion of a manager's salary for his one random phone call to a committee staff would constitute a definite problem. It will be far easier to determine a figure for those who make 12 or more communications with respect to the same issue, because their lobbying activities are more than incidental in nature.

CONCLUSION

NAM believes that S.2477 has made important strides in the lobbying area; as we noted, there have been several improvements over the other lobbying bills introduced so far. However, the bill get bogged down by covering issues before the Executive Branch; it still ignores constitutional objections on freedom of association and "Separation of Powers" grounds; and it gives the Comptroller General too much power (implied power to add substantive additions

to the registration and reporting requirements, as well as express power to conduct in-depth investigations under the guise of a study sought by one Member). NAM has also pointed out some problems with wording ("affiliate", and "each aspect of the issue". . .) and in particular, the major difficulties which we still foresee with the mechanics of reporting "total expenses in connection with all the issues".

If these problems are ironed out, we would consider giving our full support to S.2477.

STATEMENT
on
THE LOBBYING ACT OF 1975 (S.2477)
for submission to the
SENATE GOVERNMENT OPERATIONS COMMITTEE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
FREDERICK J. KREBS*
November 19, 1975

On May 14 of this year, the National Chamber testified before this Committee concerning S.815, the Open Government Act of 1975 and S.774, the Public Disclosure of Lobbying Act of 1975. At that time, we urged rejection of those bills "as proposals which impinge upon basic constitutional rights, create an atmosphere in which individual citizens will be inhibited in their exercise of these same constitutional rights, and impose onerous recordkeeping and reporting requirements which are disproportionate to any public interest purpose asserted by the bills' proponents."

S.2477 contains significant improvements over S.815 and S.774. The changes in the registration and recordkeeping requirements should be noted, particularly the elimination of the requirement that voluntary membership organizations make public confidential data with respect to their members' dues.

In addition, the exemptions of informational requests and testimony presented for the hearing record from the definitions of "lobbying communications" and "lobbying solicitations" are significant improvements. These changes represent a serious effort by the Committee to improve the legislation and should be commended.

However, the National Chamber must emphasize its strong opposition to several provisions of this bill. Serious reservations about the constitutionality of several sections, the burdensome and onerous reporting and recordkeeping requirements and an apparent failure of the bill to achieve its

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*Office of the General Counsel, Chamber of Commerce of the United States

stated purpose are the primary reasons for this opposition. In particular, we wish to call attention to what the National Chamber believes are serious flaws in the provisions of S.2477 regarding the extent of coverage; registration, recordkeeping and reporting requirements; indirect lobbying; publications of voluntary membership organizations; and publication of membership lists.

Extent of Coverage

S.2477 provides that an organization "acting through its officers, directors, or employees, or through any other person who is not a lobbyist and who acts at the request of the organization and with its prior knowledge" may become a "lobbyist" upon the completion of the requisite number of "lobbying communications" or "lobbying solicitations." This number is so low as to provide extremely far-reaching and extensive coverage. The "trigger" requirements are: (A) twelve or more oral lobbying communications, (B) spending $200 or more to make one or more "lobbying solicitations" that may reach or be expected to reach, directly or indirectly, five hundred or more persons, or (C) soliciting fifty or more employees, officers or directors or twelve "affiliates."

The result is that any company or organization becomes a "lobbyist" if twelve officers or employees each make one oral communication to a member or employee of Congress. There is not even a requirement that the communications concern the same issue.

The definition of "lobbying solicitation" creates a similar problem. At what point does a company or association newsletter begin "urging" or "requesting" its readers to begin "initiating, promoting, opposing [or] effectuating" "the total of all matters, both substantive and procedural" relating to a "proposed" bill or agency action and stop informing its readers about the "existence, status, or effect" of the "proposed" bill or agency action?

Despite this sweeping coverage, it is not clear that this bill would require complete disclosure of the activities of someone who, although not an employee of a lobbying organization, is closely connected with the

organization, and who acts on his own initiative in the name of the organization. A loophole is created by the requirement that the organization have prior knowledge of the person's lobbying activity. In this situation, such a person could lobby extensively and, despite the subsequent ratification of his efforts by the organization, none of the reporting or registration requirements would be triggered.

This loophole could be eliminated by the deletion of the word "prior." This amendment would prevent an organization from alleging that it would not be covered due to a lack of prior knowledge of this person's activities. At the same time, the requirement that the organization be "acting through" someone in order to trigger coverage would protect the organization from officious intermeddlers.

Registration, Recordkeeping and Reporting

The National Chamber does not oppose the concept of disclosure per se, but it does oppose unreasonable, complex, costly and time-consuming recordkeeping and reporting requirements. As noted previously, in our opinion S.2477 represents an attempt to formulate more reasonable requirements than those in S.815 and S.774. Nevertheless, under the terms of S.2477, when a "lobbyist" registers, he must identify the "particular issues" which he expects to influence and the "means" employed. Very often it will be impossible to provide, at that time, the information with the degree of specificity required. It should be sufficient to require the "lobbyist" to indicate the category of issues that may concern him or his constituents.

In addition, the particularity demanded in the quarterly reports is both unnecessary and burdensome. Information as to the "lobbyist's" position with respect to every amendment or proposed change to a particular piece of legislation is burdensome and of little use. A general indication of the "lobbyist's" position and the issues on which "lobbying" occurred should be sufficient.

Furthermore, S.2477 requires that organizations provide samples of written solicitations, transcripts of oral solicitations, a breakdown

by state of all persons solicited and the probable outcome of the solicitation. It would be highly impractical to require this detail from each individual who makes a large number of phone calls or communications dealing with any particular issue.

In addition, with respect to each issue concerning which a covered solicitation is made, the "lobbying" organization must report the total expenses incurred. Must a company, for example, require its officials to allocate their time spent dictating letters, making phone calls, or researching a problem? That is the apparent requirement of this bill.

It is not clear that this disclosure is necessary or will be effective. Much of the information required will only be of historical value by the time it is available in a public report. More importantly, the amount of money spent by a "lobbyist" is not necessarily an indication of his effectiveness in espousing that view.

Any objective analysis of the registration and reporting requirements of this legislation will reveal that these provisions will present practical problems and create burdens not only for large companies and business associations, but also for many smaller organizations that are less able to afford the expenses of compliance.

Indirect Lobbying

S.2477 covers direct contacts with Congress and the Executive Branch, when such Executive Branch contacts relate to an issue before Congress. In addition, coverage extends to indirect or "grassroots" lobbying on any issue before Congress or the Executive Branch. This includes solicitations by voluntary membership organizations of their members to make a "communication... to influence an issue before Congress" or the Executive Branch. Furthermore, this bill covers solicitations of these members to solicit third parties to communicate with Congress or the Executive Branch. When this provision is considered in conjunction with the broad and sweeping definitions of "influence" and "issue" and the vague definition of "solicitation" previously discussed, the

coverage is exceptionally far-reaching. The effect is to treat as "lobbying" many salutary and legitimate activities that have not heretofore been included within the traditional definition of the term. The result is coverage far beyond what is constitutional, necessary or proper.

The purpose of this legislation, according to its proponents, is to close the so-called "gaping loopholes" created by the Supreme Court in United States v. Harriss, 347 U.S. 612 (1954). As was indicated in our previous testimony, the rationale behind the Court's decision to construe "lobbying activity" as direct contact with Congress was to avoid "serious constitutional doubt."

In the recent case of Buckley v. Valeo 529 F.2d 821, (D.C. Cir.1975), the United States Court of Appeals has reaffirmed and reiterated this rationale:

> The Supreme Court has indicated quite plainly that groups seeking only to advance discussion of public issues or to influence public opinion cannot be equated to groups whose relation to political processes is direct and intimate. In United States v. Rumely, 345 U.S. 41 (1953), the Court upheld a resolution authorizing a House committee to inquire into lobbying activities after construing it narrowly to apply only to representations made directly to Congress, and not to indirect efforts to influence legislation by changing the climate of public opinion. On that basis it affirmed the reversal of a conviction for failure to furnish the committee with financial records of an organization. In the course of its opinion, the Court stated:
>
> > 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.
>
> Id. at 46. Cf. United States v. Harriss, ...
>
> Buckley, 529 F.2d at 873.

Changes in the definition of "lobbyist" such as those attempted in this bill cannot eliminate this "serious constitutional doubt."

Publications of Voluntary Membership Organizations

S.2477 defines a "lobbying solicitation" as any solicitation "urging, requesting or requiring" a person to communicate with Congress or the Executive Branch in order to "influence an issue." The definition also includes a solicitation to make such a solicitation. Solicitations made in the "normal course of business" by a newspaper, magazine, periodical, or book distributed to the general public are exempted from the definition. It is not clear under this bill what the status would be of a publication that is not distributed to the general public but is made available upon request. However, a publication, such as a newsletter, by a voluntary membership organization or a company which, although regularly produced, is not for the general public, would not be exempt. An organization which published such a newsletter urging its readers to express their own opinions to their respective Congressmen would be making a "lobbying solicitation" within the meaning of the bill. The result would be the triggering of the numerous reporting and recordkeeping requirements in this bill with the threat of civil and criminal sanctions, merely for urging people to exercise their constitutional rights to petition the government. As stated in our previous testimony, such a hair-splitting distinction is illogical and unfair.

Assuming, arguendo, that such a distinction is constitutionally valid, an additional problem is created by the broad definitions of "solicitation", "influence" and "issue". It is not clear when a newsletter or publication would cross the line between informing its readers about a particular issue and "requesting" or "urging' them to take action. As a result, many voluntary organizations will find themselves confronting the horns of a dilemma: either comply with burdensome requirements or risk criminal prosecution for violating a vague statute.

Publication of Membership Lists

An additional constitutional question is raised by the requirement that voluntary membership organizations which become "lobbyists" must identify each organization from which they received income and the names of "each affiliated

organization" to which they made a solicitation. The practical result of these reporting and registration requirements would be the involuntary disclosure of the organization's membership lists.

As we indicated in our previous testimony, the major impact of this provision would be on business associations--trade and professional associations, and state, regional and local chambers of commerce. Many of these associations do not publish membership lists for good and practical policy and business reasons.

To publish names of members would convey the unwarranted implication that each member supported any and all positions taken by the association. Yet, many members may support the organizations specifically because of programs and purposes unrelated to any "lobbying" efforts by that organization. The fact that these associations operate on the basis of majority rule would be lost on those who review and publicize the registration and reporting forms mandated by the bill.

The constitutional implications of these disclosure requirements must be considered. Numerous decisions by the Supreme Court and Courts of Appeal have held such involuntary disclosure of membership lists unconstitutional. /e.g., NAACP v. Alabama 357 U.S. 449 (1958); Buckley v. Valeo 519 F.2d 821, 865-74 (D.C. Cir. 1975)/. A more detailed analysis of this issue is provided in Appendix A of our testimony presented on May 14, 1975.

This particular constitutional infirmity might be avoided by requiring instead that voluntary associations provide a general description of their membership. Such disclosure would provide the public with adequate information while protecting the constitutional rights of the members of voluntary associations.

Chilling Effect

The effect of this bill would be directly contrary to its finding that the people of the United States should have "the fullest opportunity... to exercise their Constitutional right to petition their Government...and to provide information..." Its passage would have an immediate chilling effect on the activities of those people and organizations that seek to exercise their

constitutional right to petition and provide the government with information.

As previously discussed, the legislation's broad coverage coupled with its lack of specificity in defining when someone "requests" or "urges" another to "initiate" action with respect to a "proposed" bill would have an impermissible chilling effect on the exercise of First Amendment rights. S.2477 covers not only those who are paid to "lobby" directly before Congress, but also corporate executives who urge their employees to become active in the legislative process as well as the association newsletter that urges its readers to express their opinions to Congress.

Assuming, arguendo, that adequate specificity has been provided in the legislation and that it is also constitutionally permissible to cover indirect lobbying, the burdensome and impractical recordkeeping and reporting requirements alone would be sufficient to effectively shut off information and access to the Government. The costs of compliance and the threat of civil and criminal sanctions for a violation of the reporting requirements would, for many, inhibit or limit their participation in governmental processes.

SUMMARY

The National Chamber recognizes the need for revision or replacement of the Regulation of Lobbying Act of 1946. It is a matter of general agreement that the present law is inadequate and in need of change; but the Committee should bear in mind that constitutional as well as practical considerations dictate a narrow scope of coverage in any new legislation.

The National Chamber must re-emphasize its opposition to those portions of S.2477 which infringe upon the constitutional right of citizens to petition the Government and which create onerous, burdensome and unnecessary record-keeping and reporting requirements. This statement reaffirms the position and views of the Chamber as expressed in our testimony of May 14, 1975.

STATEMENT OF CERTAIN RELIGIOUS ORGANIZATIONS
TO THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS
ON LOBBYING DISCLOSURE BILLS

The following religious organizations join in this statement, and all endorse substantially the views contained in it:

National Council of Churches

Lutheran Council in the U.S.A. on Behalf of the American Lutheran Church and the Lutheran Church in America

World Ministries Commission, Church of the Brethren

Center of Social Activity, United Church of Christ

Washington Office, United Presbyterian Church, U.S.A.

Board of Church and Society, United Methodist Church

Public Affairs Office of the Executive Council of the Episcopal Church

Baptist Joint Committee on Public Affairs

Washington, D.C. Office, Christian Science Committee on Publication

National Council of Jewish Women

We support wholeheartedly the principle of an open government with official processes functioning in full view of the people. The recently adopted rules assuring public access to committee hearings, markup sessions, etc., are part of a healthy trend which should restore public confidence in the ultimate responsiveness of our democratic processes. Nevertheless, there are limits to the sphere of public disclosure, limits grounded on the basic Constitutional rights of free speech, freedom of association, the right to petition government, and the right of privacy all expressed in the Bill of Rights, and we believe that the lobbying disclosure bills before you transgress these limits. Of equal concern to us are problems of freedom of

of religion and the discrimination against tax exempt organizations inherent in these bills and the Internal Revenue Code.

Freedom of Speech, Association and Petition

A conversation between an individual and a representative of his government is not an official activity of government. It is a personal matter.

The heart of the democratic process is the free, direct and untrammeled communication by citizens with their elected officials and appointed administrators. Anything which encourages this flow of communication will enhance the working of democracy, and anything which discourages it will tend to stifle the working of democracy. This is why the principle of "open government" should not apply to the monitoring of speech.

The statements in the First Amendment are in absolute terms. "Congress shall make no law," it says and the special values it protects are the focal points of these bills -- "the freedom of speech" and "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The Supreme Court has interpreted the First Amendment strictly, allowing restrictions on these freedoms only when there is a grave and probable danger to public safety.

A compelling government interest must be demonstrated in order to justify restricting so basic a liberty.

We are troubled by any proposal that would require an American to report oral communications to government and to

register with a government agency as a condition of petitioning elected representatives. Several aspects of the bills before your committee combine to present a formidable threat to the rights of free expression and petition.

First must be recognized the chilling, stifling effect of the act of reporting itself. The obligation to register and identify the specific purposes of a conversation reduces speech from a right to a privilege. Honest citizens with nothing to hide will hesitate before they talk as they recall that the fact of their statements must be filed for the scrutiny of everyone. We all know how the publication of one's political views can result in social ostracism and economic reprisals. Discussions, argument, give-and-take, which now are freely exchanged before one's views are fully formulated, all would be suppressed by the spectre of pending exposure. The open interplay of ideas so vital to a dynamic law-making process would be replaced by cautious, artificial dialogue such as children engage in when the schoolteacher walks by.

A policy statement of the National Council of the Churches of Christ, in the U.S. states in part, "Freedom of association and freedom of speech imply a right to privacy and often depend on it...." This pronouncement in full is attached to this statement.

Second, the unfortunate stigma attached to the term "lobbyist" will undoubtedly prevent many citizens from participating in the legislative process. The full-time professional lobbyist will not

be deterred by the designation, but the citizen with a special concern about a social problem will be shocked at the prospect of being registered in government files under nomenclature associated in the public thought with wheeler-dealers and manipulators of money and political pressure.

Third, the burdensome paperwork required by these lobbying disclosure proposals cannot help but limit free speech. Every oral communcation would have to be noted and described with identification of subject matter, identification of other lobbyists engaged, each decision of the policy-making process involved, each Federal officer of employee contacted, a description of procedures used to solicit others to lobby, and on and on. The lobbyist for a large affluent organization could adapt to the red tape by adding more clerical staff, but the small ad hoc or semi-professional lobbyist would find the form-filling an enormous clerical problem. The voluminous detail would create a serious prior restraint on free expression.

In this respect S. 2477 is a definite improvement on previous bills. It would exempt the individual who works on his own and spends no money.

Fourth, the vagueness of several provisions in these bills would inhibit the freedom to speak and petition government. With respect to S. 2477, when does ordinary comment become "influence"? (sec.3(9)). Where is the borderline between "a communication which deals only with the existence....of an issue..."(sec.4(d)(2)) and a "lobbying communication"? How near to real possibility must

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action be before it becomes an "issue before the executive branch"(sec.3(11)). A limitation on any right as precious as freedom of speech should have definitions that are crystal clear.

Fifth, the inclusion in the definition of "lobbyist" of anyone who makes eight or twelve communications seems extreme to us. A person in a group of Federal employees can make that many communications in a few minutes. The housewife who complains repeatedly to her postman about postal service could, under S.815, unwittingly become a lobbyist and could be fined for failure to register. This test cannot help but inhibit speech. After that seventh or eleventh telephone call, the concerned citizen will undoubtedly weigh very heavily whether he wants to become a lobbyist or make his organization one before he dials again.

All your witnesses seem to agree that the present lobbying law is weak and ineffective, yet the Supreme Court upheld it only with great reluctance by a 5-3 vote (United States v. Harriss, 347 U.S. 612 (1954). Their interpretation emasculated the Regulation of Lobbying Act, and then begrudingly let the impotent remains stand. Chief Justice Warren said (347 U.S. at 625):

> It /Congress/ has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect and spend funds for that purpose. It wants only to know who is being hired, who is putting up the money, and how much.

* * * *

> Under these circumstances, we believe that Congress, at least within the bounds of the Act as we have construed it, is not constitutionally forbidden to require the disclosure of lobbying activities.

If the Court would barely tolerate the present law, what would it do to one which demands detailed explanations over every conversation involving the policymaking process?

Several other Supreme Court decisions cast doubt on registration statutes which involve freedom of association. NAACP v. Alabama , 357 U.S.449 (1958); Shelton v. Tucker, 364 U.S.478 (1960). They find that wherever disclosure of private activity or beliefs to officials is required there is the possibility of arbitrary government action. Gibson v. Florida Legislative Investigation Committee, 373 U.S.539(1963).

Freedom of Religion

The Lobbying Disclosure Act has a particularly serious effect on religious organizations. They are caught between their spiritual obligation to bear witness in all aspects of their lives and the threat of loss of contributions if the Internal Revenue Service should attempt to revoke their tax-exempt status.

The Internal Revenue Code, section 501(c)(3), exempt from taxation certain kinds of nonprofit organizations, including religious organizations, "no substantial part of the activities of which is carrying on propaganda, or otherwise

attempting to influence legislation...." There is little to help the exempt organization in determining what constitutes "substantial" legislative activity, but a 1955 decision of the U.S. Circuit Court of Appeals, Seasongood v. Commissioner, 227 F.2d 907, held that 5% of a particular organization's time and effort was not "substantial". This figure has become a benchmark although it was never offered as a ceiling, and few organizations have had the courage to venture beyond this limit.

This "substantiality test" is both inequitable and vague. Voluntary non-profit publicly supported charities (both religious and secular) care deeply about the quality of American life - their very existence depends upon a concern for the elevation of society. Such a concern will only naturally reach into the arena of legislation and there is no reason why this one constructive thread of our national fabric should be left out. The limitation on lobbying in section 501(c)(3) can be traced to a Senate floor amendment in 1934 and was never intended to apply to public charities.

A recent U.S.Court of appeals decision rescinding the exempt status of a church struggled to pin down the concept of substantiality without a mathematical formula, but left us with only a stronger feeling of the need for Congressional clarification. Christian Echoes National Ministry, Inc. v. U.S. 470 F.2d 849 (1972), cert.denied, 414 U.S.864 (1973).

For all public charities a muted voice on public policy issues is the price of tax exemption. They are limited to offering direct

services to the poor and the handicapped and find themselves futilely patching the effects of social evils while they are thwarted from seeking to change the causes. We believe this is wrong. Charities that devote their resources to the solution of society's problems should be encouraged to participate in the formulation of public policy.

But for religious organizations the wrong is even more acute because of the unique status of religion in American life. The First Amendment prohibits the government from thwarting or inhibiting a church in the pursuit of its spiritual goals. The state cannot require the surrender of the constitutional right of religious liberty even as a condition for the enjoyment of what some consider to be a statutory "privilege." It is not properly within the power of government to interpret the role of church in society or to decide how an individual should practice his religion. The Supreme Court has said that tax exemption of churches cannot depend on any test of social utility, because religion depends on values of its own and cannot be subjected to political criteria. Walz v. N.Y. State Tax Commission 397 U.S. 664 (1970).

Many of the religious organizations endorsing this statement believe that they have an affirmative religious duty to participate actively in the formulation of the public policies of the nation. The General Board of the National Council of Churches has adopted a resolution on "Tax Policy and Action in the Public Interest," which reads in part as follows:

> Many of our member churches believe that Christians are obligated by their faith to make Christ the Lord of

> all aspects of their lives, and that public policy is not an exception to that obligation. **** We affirm that speaking out on public issues can be, and for us is, part of the "free exercise of religion" protected by the First Amendment. Furthermore, when government grants tax exemption to church bodies which are silent on public issues, while denying, or threatening to deny, such exemption to those who are not silent, it is discriminating for the former and against the latter in violation of the prohibition against an "establishment" of religion.

The religious organizations of America have made important contributions to the vitality of our democracy without expectation of material gain. Ironically the Internal Revenue Code permits business corporations to deduct substantial lobbying expenses from taxable income, at the same time it severely limits nonprofit exempt organizations from influencing legislation. The result is a policy which welcomes legislative efforts to advance private interests while it penalizes groups dedicated to the public interest.

Into this situation come the lobbying disclosure bills which would compel churches and synagogues to relate all their conversations with government officials in detail and file them for review by the public, including the Internal Revenue Service. The effect is obvious. Exempt organizations would be required to document a case for the removal of their tax exemption. The

situation would be particularly ironic in view of recent disclosures regarding the arbitrary use of power by the Internal Revenue Service. The surveillance of exempt organizations and their political activities is set forth in a frightening report for the Joint Committee on Internal Revenue Taxation dated June 5, 1975 and entitled, "Investigation of the Special Service Staff of the Internal Revenue Service."

A section of each of the bills before you addresses the problem, but none of them is clear. Section 8 of S. 2477 reads:

> "An organization shall not be denied exemption under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(c) of such Code, and shall not be denied status as an organization described in section 170(c)(2) of such Code, soleley because such organization complies with requirements of sections 5,6,and 7 of this Act."

Does this mean that the I.R.S. cannot use the fact of an exempt organization's reporting or that it cannot use the content of the report? Either intrepretation will stifle charities from speaking out, but if the substance in the report can be introduced in court, the muzzling effect will be very severe. Surely the section cannot mean that Internal Revenue agents cannot peek at all, and once they scan the reports, the compilation of independent evidence will be easy. Section 8 is completely unsatisfactory.

Every instance of rescission of the exempt status of a

religious organization has been fraught with sectarian bitterness and charges of religious bias. Christian Echoes National Ministry, Inc. v. U.S. 470 F.2d 849 (1972) cert. denied, 414 U.S. 864 (1973). The decisions which face the I.R.S. involve all the problems of entanglement between clergy and bureaucrats that underlies recent parochial school aid decisions. Lemon v. Kurtzman 403 U.S. 602 (1971); Pearl v. Nyquist 413 U.S. 756 (1973); Meek v. Pittenger 43 U.S. Law Week 4596 (1975).

We are particularly disturbed by the testimony of the Justice Department in opposition to any limit on the use of lobbying reports. They would like to compel exempt organizations to furnish all the evidence to build a case against themselves, a case based on a prohibition that no one knows the meaning of. Such a policy disregards the spirit of the privilege against self-incrimination and will undoubtedly frighten many tax-exempt organizations out of any contact with the world of government, however legitimate.

Any attempt by the government to regulate or restrain the expression of religious conviction in the public arena will inevitably result in discrimination between denominations which are silent on political problems and those which, in response to their own most deeply held beliefs, speak out on public issues. Discrimination in tax or lobbying statutes between faiths based on differing approaches to moral and social problems violates both the "establishment" and "free exercise" clauses of the First Amendment.

We suggest an amendment to the definition of "lobbying" to

exclude "acts of persons who represent churches, conventions or associations of churches or integrated auxiliaries of churches." The phrase would appear as section 4(d)(9) of S 2477. This phrase is already used elsewhere in federal law and has a specific meaning. Section 4(d) recognizes the limitations of government with respect to freedom of the press. It should acknowledge the other half of the First Amendment and grant a similar exemption to guarantee the free practice of religion.

Three state lobbying registration laws contain exemptions for representatives of "bona fide churches". See Ill.Ann.Stat. Ch.63 sec.174;Ch.7½ sec.24; N.J.Stat.Ann.sec.52:13C-27; Cal. Code title 9 sec.86300(c). The recently enacted California Political Reform Act, containing the strongest lobbying disclosure requirements in the nation, exempts:

> "A person when representing a bona fide church or religious society solely for the purpose of protecting the public right to practice the doctrines of such church."(Cal.Code title 9 sec.86300(c).

If a bill like S.774, S.815 or S. 2477 passes, what will American churches and synagogues do? Probably some of them will suppress their prophetic function, withdraw from contact with government and withhold public comment which might be construed as "indirect lobbying." For much of the American religious community, however, these bills would make the price of religious conviction too high in terms of sacrificed principles.

Conclusion

It is democratically and constitutionally wrong to require Americans to report oral communications with Congressional and executive officials to the extent found in these bills. The obligation to report conversations, the stigmas attached to the term "lobbying", the enormous paperwork requirement, and the vague definitions in the bills all combine to make them an intolerable burden on the public's right to free access to their government. The "twelve communications" test encompasses much too much of the public as lobbyists.

The Congress should take no action which might inhibit churches and synagogues from speaking out about the problems facing America. Following the example of Jesus and the Old Testament prophets, we feel a valid moral duty to uplift the level of society by entering into the public life of the nation as well as speaking from the pulpit. A solution to the problem requires a reform of section 501 of the Internal Revenue Code, a matter not before your committee at present. But at least any lobbying reform bill should not compound the problem by compelling religious spokesmen acting in response to their faith to publicize essentially personal conversations.

In closing let us restate our thanks to the sponsors of these proposals for their desire to redeem the confidence of America in representative government.

The American Legion

★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006 ★
(202) 393-4811 ★

For God and Country

June 11, 1975

Honorable Abraham Ribicoff, Chairman
Senate Committee on Government Operations
3306 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Chairman Ribicoff:

Enclosed is a statement prepared by the National Judge Advocate of The American Legion setting forth the official views of our organization on S. 815, to provide for the public disclosure of lobbying activities.

The statement was prepared in anticipation of our personally testifying on this subject before your Committee, and is submitted for your consideration of including it in the hearing record.

We will also appreciate an opportunity to submit additional remarks in the event an amended version of this legislation is subsequently drafted.

Your continued cooperation with this office is appreciated.

Sincerely,

Mylio S. Kraja, Director
National Legislative Commission



Statement of

The American Legion

1608 K STREET, N. W.
WASHINGTON, D. C. 20006

APRIL 14, 1975

TO THE
SENATE COMMITTEE ON GOVERNMENT OPERATIONS
ON
S.815, "OPEN GOVERNMENT ACT OF 1975",
TO AMEND THE LOBBYING ACT OF 1946

The American Legion appreciates the opportunity to present its views on S.815, a bill "To provide for the public disclosure of lobbying activities with respect to Congress and the executive branch, and for other purposes."

The American Legion was chartered by an Act of the Congress of the United States on September 16, 1919. (36 USC, SS 41 through 51 inclusive). Its membership is comprised of honorably discharged veterans who served during a wartime period or who have served during a wartime period and have remained thereafter in military service. The membership of The American Legion approximates 2,583,887. The American Legion has chartered 58 Departments and 15,906 Posts, all of which are presently functioning. Its legislative activities are confined primarily to its four basic programs, namely, Rehabilitation and Veterans' Affairs, Americanism, Child Welfare and National Security.

Under 36 USC, S 49, of the Federal Act of its Incorporation, The American Legion is required to furnish to the Congress of the United States on or before the first day of January of any given year, a report of its proceedings for the preceding calendar year. These reports are printed as

public documents. The authority for printing the proceedings of The American Legion as public documents may be found in 44 USC, § 1332. The annual reports tendered by The American Legion to the Congress of the United States also include a complete disclosure of its financial transactions together with an audit performed by an independent, nationally recognized, firm of certified public accountants located in Indianapolis, Indiana.

The American Legion as a corporation is registered pursuant to the Federal Regulation of Lobbying Act (2 USC, § 261, et seq.) and files quarterly reports with the Secretary of the Senate and the Clerk of the House of Representatives as required by law. Additionally, the Director, Deputy Director and Assistant Director of the Legion's National Legislative Commission are also registered under the provisions of the Federal Regulation of Lobbying Act and each of them comply with the quarterly reporting requirements of the existing law.

The American Legion, as a legitimate and responsible organization, does not object to providing information on its legislative activities to the Congress of the United States nor does it object to providing this information to any other body which might be designated by law, provided that, the law requiring disclosure is clear, unambiguous, free of consti-

tutional flaws and serves a legitimate governmental function. The practice of "lobbying" dates back to the very first Congress and has always been accepted as an effective adjunct to the legislative process. The professional lobbyist, as the paid representative of an organized group, performs a most useful purpose to the organization he represents and to the Congress of the United States. While many refer to the lobbyist in a pejorative sense, we view the lobbyist's functions as constituting a legitimate and indispensable part of the legislative process.

DISCUSSION OF S.815:

The "Findings" of the Congress under Section 2(a) of S.815 are indeed noble and unobjectionable. Moreover, we do not quarrel with the stated "Purpose" of S.815. However, we submit that the language contained in the findings and purpose of the Bill are illusory, deceptive and misleading when one examines the Bill in its entirety.

The several provisions contained in the body of the Bill belie the findings and purposes as stated in the Bill. It is our very strong belief that if this Bill becomes law, we will witness precisely a suppression of the people's right to petition the government of the United States for a redress of grievances and to express freely to Federal officers and

employees in Congress and the executive branch their opinions on pending legislative and executive actions and other policy issues. Under this complex, burdensome and ambiguous Bill the price to be paid to assert that right with the ominous threat of criminal sanctions is much too high. It is our judgment that the measures employed in the Bill to carry out its purposes are draconian. Quite apart from its questionable constitutionality, the language in many Sections of the Bill imposes unnecessary, harsh and inordinate burdens upon the constitutional right of free speech and petition.

It is also our considered judgment that the administrative provisions of the Bill are cumbersome, unclear, ambiguous and are of dubious value to the Congress or to the executive branch of government in order to accomplish the purpose set out in the Act.

Finally, the Bill completely abandons the principal purpose doctrine enunciated by the Supreme Court of the United States in the Harriss Case and substitutes therefore a doctrine of restraint upon the exercise of free speech under the First Amendment to the Constitution of the United States through the medium of a questionable redefinition of what is meant by the term "lobbying." For the reasons stated hereafter, The American Legion is unalterably opposed to S.815 as presently drafted.

Section 3 of the Bill concerns itself with "Definitions", which are controlling under the contemplated Act. In our judgment the definitions employed when read in pari materia with each other are ambiguous, unclear and confusing. Section 3(b) defines "policymaking process" as follows:

> "'policy making process' means any action taken by a federal officer or employee with respect to any pending or proposed bill, resolution, amendment, nomination, hearing, investigation, or other action in Congress, or with respect to any pending or proposed rule, adjudication, hearing, investigation, or other action in the executive branch;"

Section 3(c) of the Bill defines "Federal officer or employee" as follows:

> "'Federal officer or employee' means any officer or employee in the legislative or executive branch of the Federal Government, and includes a Member of Congress, Delegate to Congress, or the Resident Commissioner from the Commonwealth of Puerto Rico;"

Section 3(i) defines "lobbying" as follows:

> "'lobbying' means a communication, or the

solicitation or employment of another to make a communication, with a Federal officer or employee in order to influence the policymaking process, but does not include --

(1) testimony before a congressional committee, subcommittee, or joint committee, or before a Federal department or agency, or the submission of a written statement thereto, if such testimony or statement is made a matter of public record by the committee, subcommittee, department, or agency;

(2) a communication or solicitation by a Federal officer or employee, or by an officer or employee of a State or local government, acting in his official capacity;

(3) a communication or solicitation, other than a publication of a voluntary membership organization, made through the distribution in the normal course of business of any news, edi-

torial view, letter to an editor, advertising, or like matter by --

(A) a newspaper, magazine, or other periodical distribution to the general public;

(B) a radio or television broadcast; or

(C) a book published for the general public;

(4) a communication or solicitation by a candidate, as defined in section 591(b) of title 18, United States Code, made in the course of a campaign for Federal office; or

(5) a communication or solicitation by or authorized by --

(A) a national political party of the United States or a National, State, or local committee or other organizational unit of a national political party regarding its activities, undertakings, policies, statements, programs, or platforms; or

(B) a political party of a state, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or a committee or other organizational unit of such political party, regarding its activities, undertakings, policies, statements, programs, or platforms."

Section 3(j) defines "lobbist" as follows:

"'lobbyist' means any person who engages in lobbying and who --

(1) receives income of $250 or more as compensation for employment or other activity during a quarterly filing period, or of $500 or more as compensation for employment or other activity during four consecutive quarterly filing periods, when lobbying is a substantial purpose of such employment or activity;

(2) makes an expenditure for lobbying,

except for the personal travel and lodging expenses of such person, of $250 or more during a quarterly filing period, or of $500 or more during four consecutive quarterly filing periods; or

(3) in the course of lobbying during a quarterly filing period, communicates orally on eight or more separate occasions with one or more Federal officers or employees;"

We suggest that the language contained in 3(b) of the Bill in dealing with the definition of the "policymaking process" is extremely ambiguous, much too broad in its scope and incapable of being understood by the average reasonable prudent man. How is one to determine when a Federal officer or employee, as defined in 3(b) of the Act, has "taken any action" as contemplated by the Bill. The word "taken" is the past participle of the verb "take." Does one, who after having made a contact with a Federal officer or employee monitor the situation thereafter to ascertain whether the Federal officer or employee has "taken any action?" Suppose the Federal officer or employee is contacted by telephone or by mail or by personal contact, and based on the contact, does nothing. Does this constitute lobbying under the Bill?

The language in the last two lines of Section 3(b), namely, "or other action in the executive branch" is inordinately broad and in our judgment, could not pass constitutional muster. In fact, the language "or other action in the executive branch" is so broad as to cut across every human activity, and every phase of human endeavor, whether political, economic, social, educational, scientific, religious, aesthetic, literary, philosophical or metaphysical.

To compound the ambiguity contained in Section 3(b) of the Bill, we find under Section 3(i) of the Bill, quite apart from the exceptions therein, that lobbying means a communication, or the solicitation or employment of another to make a communication, with a Federal officer or employee in order to influence the policymaking process. Websters Third New International Dictionary defines the term "influence" as

> "to affect or alter the conduct, thought or character of by indirect or intangible means."

In view of our difficulty with the language contained in Section 3(b) of the Bill, we now inquire as to who would make the determination as to whether a communication with a Federal officer or employee influenced or affected or altered the conduct, thought or character of that Federal officer or employee's action? Can it be assumed that if the Federal officer or employee took no action based upon the communi-

cation of an individual, corporation, etc., then despite the intent of the person making the communication, that there is no chargeability to "influence" the policymaking process. Or suppose there was such an intent and the Federal officer or employee did nothing, would the conclusion be that the individual was lobbying?

Section 3(j)(3) of the Bill is also particularly troublesome. Under the definition contained in this Section and Subsection, a "lobbyist" is any person who during a quarterly filing period, communicates orally on eight or more separate occasions with one or more Federal officers or employees. The American Legion employs numerous accredited representatives in Washington, D. C., who are authorized to present claims for and on behalf of veterans before the United States Veterans Administration. It is obvious under the provisions of this Bill that most, if not all of these employees, would become "lobbyists" by virtue of this definition. As a matter of pointed fact, it could conceivably also include the secretaries of these accredited representatives and indeed the veteran himself. To exemplify this last point; suppose a veteran orally discusses his claim with one or more contact representatives of the Veterans Administration on eight or more occasions, would he not be required to register under this Bill? Moreover, it could include a substantial portion of our citizenry, particularly those who exercise

their right to contact their Representatives in Congress to express their views on pending legislation. We suggest that if our surmise is correct, that this Bill constitutes a suppression of those rights guaranteed to citizens under the Constitution of the United States. We respectfully remind the Committee that there are criminal sanctions contained in this Bill. One of the requisites in declaring what shall constitute a crime or punishable offense is that a citizen must be informed with reasonable precision what acts are proscribed so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid. As a general rule a criminal statute that either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess as to its meaning and might differ as to its application lacks the first essential of due process. It is our judgment that the ordinary man or woman of common intelligence would have considerable difficulty in ascertaining whether, in fact, he or she is in compliance at any given time with the multiple provisions of the Bill so as to avoid its criminal sanctions.

Again, referring to Section 3 of the Bill, we learn that a new dimension has been added to the Bill. Under Section 3(j)(1) we find the following language contained in the last two lines; "When lobbying is a *substantial purpose* of such employment or activity." Suppose a person receives

an income of $250 or $500 under this Section as compensation for employment but contends lobbying is not "a substantial purpose" of his employment or activity. Must he register as a lobbyist? Who makes the determination of what constitutes "a substantial purpose?" What will be the criteria for making this determination?

Finally, is not the language questioned a modification of Section 3, Subparagraphs (b), (i) and (j)(2) and (3) of the Bill? We suggest that it is. If it is, then Section 3 of the Bill should be redrafted so as to remove any doubt and to make crystal clear what constitutes the "policymaking process", what constitutes "lobbying" and what constitutes "a lobbyist."

We shall now direct our attention to Section 4 of the Bill captioned "Notices of Representation." Under Section 4(a)(5) and (6) the following language is contained:

> :an identification of each person who, as of date of filing, is expected to be acting for such lobbyist and to be engaged in lobbying, including --
>
> (A) the financial terms or conditions of such person's activity; and
>
> (B) each aspect of the policymaking process such person expects to seek to influence; and

(6) in the case of a voluntary membership organization, the approximate number of members and a description of the methods by which the decision to engage in lobbying is made."

We respectfully inquire of the Committee how we can ascertain as of the date of filing, who is expected "to be acting" for The American Legion and to be engaged in lobbying. Suppose, for example, numerous Legionnaires all of whom are volunteers, located throughout the United States, orally on eight or more separate occasions communicate with one or more Federal officers or employees for the purpose of discussing pending legislation or for the purpose of discussing a proposed rule, adjudication, etc., or other action in the executive branch of government, would The American Legion be required to furnish to the Federal Election Commission an identification of each such person? We suggest that it would be virtually impossible. Moreover, it would be impossible for The American Legion to furnish to the Federal Election Commission each aspect of the policymaking process such person expected to influence. With respect to Section 4(a)(6) we would inquire of the Committee with respect to volunteer Legionnaires who might be required to register under the Act, how we could describe the methods by which the decision to engage in lobbying was made by them. We suggest that such a require-

ment is incapable of fulfillment.

Section 5 of the Bill dealing with "Records" also raises several questions. Under Section 5, each lobbyist is required to maintain financial and other records of lobbying activities as the Federal Election Commission shall prescribe. This Section requires that records be preserved for a period of not less than two years after the date of the activity. Again, dealing with volunteer Legionnaires who might make oral contacts on eight or more separate occasions with one or more Federal officers or employees, we should like to know what records they are required to maintain? If the communication is oral, there is no record to maintain unless they are required to make a record of the oral contact. Under Section 5(c)(4), the following information, inter alia, must be furnished to the Federal Election Commission:

> "expenditures relating to research, advertising, staff, entertainment, offices, travel, mailings, and publications used in lobbying;"

In connection with this Section we raise the following questions: Does the term "expenditures relating to research" mean the engaging of an outside person, firm or corporation on a contractual basis to perform research for The American Legion or does this expenditure include time spent by Legion

legislative employees on research translated into terms of dollars? Does the expenditure for entertainment include for instance, the annual legislative dinner that The American Legion hosts annually for members of Congress? Do the expenditures relating to "offices" involve an accounting procedure under which the pro rata share of office space occupied by our Legislative Division in our Washington Office would have to be translated into dollar amounts? Would the expenditures relating to "travel" include the travel costs incurred by our legislative employees when visiting our Indianapolis and New York Offices to discuss legislative matters intra Legion? If this language is inclusive of these factors, then we reiterate that the Bill imposes an inordinate burden upon those covered thereunder.

What is meant by the language in Section 5, (4)(d) - i.e.;

> "such other information as the Commission shall prescribe to carry out the purpose of this Act."

We suggest that this language is much too broad, elusive and ambiguous and we have the same objections to it that we have to the language contained in the last two lines of Section 3(b) of the Bill.

We object strenuously to the reporting procedures outlined in Section 6 of the Bill. We suggest that if the reporting requirements, as outlined in Section 6 of the Bill, become law, there will not be a lobbyist in the country who will not find it necessary to be accompanied by a secretary, or to be armed with a recorder or to have on his person at all times a thick notebook so as to record the information necessary in order to be in compliance with this Section of the Bill. Under Section 6(g) of the Bill we raise numerous questions. Suppose The American Legion through its National Legislative Commission, suggests to its volunteer membership throughout the United States that they communicate with their respective Congressman on a particular piece of legislation at a given period of time, is it not obvious that unless the individual volunteer furnishes to The American Legion a copy of any letter he might write to his respective Congressman, that The American Legion or indeed anyone else would be unable to "estimate the number of such persons who engaged in lobbying?" We suggest to the Committee that the majority of our volunteers do not own a typewriter. We also suggest to the Committee that most volunteer Legionnaires who write to their Congressman do so in their own hand without keeping a copy for their files, or indeed keeping any other visible record which would substantiate their having written a letter other than the visible evidence of the letter in the hands of the Congressman. We also suggest that the language contained in

6(h) is extremely difficult to abide. What does "a description of the procedures other than written communications" mean in this Section? Based upon our objection to 6(g) we now raise the same questions with respect to the provisions of Section 6(h). We submit that it is impossible for us to estimate the number of persons who might engage in lobbying based upon a solicitation by the Legion through a medium other than by written communication. We also question the language in Section 6(i) of the Bill. Does the Expenditure of $25. referred to therein include the situation in which a "lobbyist" might take a Federal officer or employee or a member of his staff to lunch? Suppose the purpose of the luncheon had nothing to do with lobbying and both parties knew it and would so testify. Would this expenditure have to be reported or is it a presumption that such an expenditure was for the purpose of influencing the policymaking process? It is our conclusion that this Section should be clarified in great detail.

Section 8 of the Bill dealing with "Powers of Commission" impels us to the following comments. Under Subparagraph (a)(11) the following language may be found:

> "to modify the requirements of sections 4, 5, and 6 in specific cases where such requirements, due to extenuating or un-

> usual circumstances, are overly burdensome for the lobbyist involved or unnecessary for the full disclosure of lobbying activities, provided such modifications are consistent with the disclosure intent of this Act."

We respectfully suggest that the time to modify the requirements of Sections 4, 5 and 6 of this Bill is now. It is our considered judgment that this Bill, as presently written, is now unduly burdensome for lobbyists in general and that a substantial portion of the Bill's requirements are unnecessary for the full disclosure of lobbying activities.

Under Section 9 of the Bill the duties of the Federal Election Commission are set forth with particularity. Under Subsection (b) of Section 9, the Federal Election Commission is charged with the responsibility of preparing a manual for recommended methods of bookkeeping and reporting and for the furnishing of such manual to lobbyists upon request. It is also charged under Subsection (c) with the development of a filing, coding, and cross-indexing system to carry out the purpose of the Act. Any Lobbying Act adopted which has as one of its requirements the preparation of a manual for the purposes stated in Subsection (b) of Section 9 of the Bill and which further necessitates the preparation of a filing, coding, and cross-indexing system is,

in our judgment, prima facie, an Act which constitutes a prior restraint upon the right of the people of the United States to exercise the basic freedoms given to them under the Constitution of the United States, one of which is to petition their government without restraint and to express their respective opinions on pending legislative and executive acts.

With respect to Section 13 dealing with "Sanctions", we reiterate what was stated earlier, namely, one of tne requisites in declaring what shall constitute a crime or punishable offense is that a citizen must be informed with reasonable precision what acts are proscribed so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid. As a general rule a criminal statute that either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess as to its meaning and might differ as to its application lacks the first essential of due process. Based upon our analysis of this Bill, we are of the opinion that the ordinary man of common intelligence would have considerable difficulty in ascertaining whether, in fact, he is in compliance at any given time with the multiple provisions of this Bill so as to avoid its criminal sanctions.

CONCLUSION:

At the outset of our testimony we stated that The American Legion, as a legitimate and responsible organization, does not object to providing information on its legislative activities to the Congress of the United States nor does it object to providing this information to any other body which might be designated by law, provided that, the law requiring disclosure is clear, unambiguous, free of constitutional flaws and serves a legitimate governmental function. We continue to maintain this view.

Based upon the criteria we have adopted concerning the type of lobbying law we could and would support, S.815 falls far short of the mark. S.815 as presently drafted is complex, unclear, ambiguous, not free of constitutional flaws and we doubt sincerely that its passage would provide a useful public service. Moreover, we believe that the Bill would have a chilling effect upon the free flow of communication between citizens of the United States and their duly constituted representatives. Finally, in our judgment, the administrative provisions of the Bill are draconian in nature.

We are aware that certain quarters are exerting considerable pressure upon the Congress to revamp the disclosure requirements with respect to lobbying activities in the legislative and executive branches of government.

Assuming, without conceding, that there is such a need, we suggest that S.815 is an over reaction to any such need. There must be preserved in any lobbying bill that delicate balance which will assure reasonable disclosure, supervision and control on the one hand and the retention of the right to exercise basic freedoms on the other. This is what The American Legion seeks and this is what The American Legion will support.

54-076 O - 76 - 51

AMERICAN ASSOCIATION OF HOMES FOR THE AGING
374 National Press Building, 14th & F Streets, N.W., Washington, D.C. 20045
The national organization of NONPROFIT HOMES Telephone (202) 347-2000

AAHA

November 12, 1975

NOV 14 1975

Senator Abraham Ribicoff
Chairman
Senate Government Operations Committee
3306 Dirksen Office Building
Washington, D.C. 20510

Dear Senator Ribicoff:

The American Association of Homes for the Aging (AAHA) appreciates having this opportunity to submit to you our views on lobbying reform legislation for inclusion in the record of the Committee's hearings on this important issue.

We know you recognize the vital role smaller organizations such as ours play in the public policy process. AAHA is concerned, however, over the potential adverse affects of the lobbying reform proposals being considered on these kinds of organizations. Therefore, it is this Association's hope that, as you draft lobbying reform legislation, you will consider the smaller organizations, and that any bill which is developed will encourage rather than inhibit their continued participation in the policy-making process and the communication of their viewpoints on issues of importance to them.

Thank you very much for your consideration of our comments.

With best wishes,

Sincerely,

RdShort

Richard A. Short
President

RAS:dn
Encl.

GOVERNMENT OPERATIONS COMM.
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WASHINGTON, D.C.

AMERICAN ASSOCIATION OF HOMES FOR THE AGING
374 National Press Building, 14th & F Streets, N.W., Washington, D.C. 20045
The national organization of NONPROFIT HOMES Telephone (202) 347-2000

STATEMENT

OF

RICHARD A. SHORT, PRESIDENT

OF THE

AMERICAN ASSOCIATION OF HOMES FOR THE AGING

ON

LOBBYING REFORM LEGISLATION

SUBMITTED TO THE

SENATE GOVERNMENT OPERATIONS COMMITTEE

NOVEMBER 12, 1975

Mr. Chairman and Members of the Committee, my name is Richard A. Short, and I am president of the American Association of Homes for the Aging (AAHA), the national organization representing nonprofit, philanthropic housing and homes for the aging. On behalf of the over 1300 members of the Association, I am submitting for the record our views concerning proposed lobbying reform legislation.

First, I want to commend the Committee for holding these hearings and for giving interested organizations such as ours the opportunity to submit comments.

This Association supports and recognizes the need to correct abuses of lobbying and the desirability for accountability to the public on the part of those individuals and organizations engaging in lobbying activities. The events of the past two years are sufficient evidence of what happens when there is neither openness nor accountability in government -- the result is lack of trust and suspicion. AAHA is concerned, however, that the lobbying reform proposals which have been introduced in the Congress, while perhaps correcting the abuses of a few, will unnecessarily and adversely affect smaller and reputable and honest organizations.

One of the strengths of the American system is the ability and, in fact, the responsibility of individuals

and organizations to communicate with their representatives and government officials on issues of concern to them and their constituents. Diverse opinions and viewpoints are essential to the formulation of responsive and effective public policy. It is our hope that lobbying legislation being developed in the name of reform will not be so restrictive in terms of the number of communications with Members of Congress and their staffs that our right and responsibility to communicate the views of our members is inhibited.

Furthermore, the extensive reporting and recordkeeping requirements of several of the proposals under consideration would, in themselves, inhibit smaller organizations that have not abused the present lobbying law from choosing to participate in the legislative process. They are burdensome and will likely result in costly administrative and enforcement procedures.

In our view, then, the lobbying reform proposals contain the seeds which would, either as a result of their restrictive definitions of a lobbyist and lobbying organization, or the excessive administrative requirements, result in the elimination of smaller organizations from the vital role they presently play in the public policy process.

Mr. Chairman, we urge you and your colleagues to consider the smaller organizations as you draft lobbying reform legislation.

Thank you very much.

AMERICAN AUTOMOBILE ASSOCIATION

8111 GATEHOUSE ROAD, FALLS CHURCH, VIRGINIA 22042 • 703 AAA-6000 • CABLE: AMERAUTO • TELEX 89-9485

November 20, 1975

Senator Abraham A. Ribicoff
Chairman, Government Operations Committee
United States Senate
3306 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Ribicoff:

The American Automobile Association, with more than 17,000,000 members, has watched the development of lobbying reform legislation in your Committee with interest as well as apprehension. We commend you, your colleagues and the Committee staff for your sincere efforts to draft a reasonable, workable piece of legislation. However, we feel compelled to register our deep concern with the thrust of S. 2477 and certain of its provisions.

Throughout the hearings a curious irony has been apparent. Committee members and witnesses alike have stressed the importance of the lobbyist to the legislative process and unanimously have expressed the need to tread lightly to avoid inhibiting the free exchange of ideas so vital to well-balanced legislation. Despite these precautions, we think the proposed vehicle will have serious detrimental effects.

S. 2477 and many similar bills seem to be grounded on two false assumptions. First, these bills seem to embrace the widely-held misconception that lobbyists are shady characters bent on subverting the legislative process to their own selfish interests and that legislators are venal. Your statements and those of your colleagues have made it clear that this is not your view.

Second, the bills assume that disclosure is a cure-all for this erroneous belief. We believe that disclosure and reporting requirements of the sort contained in S. 2477 will do nothing more than burden honest lobbyists and limit input from concerned ordinary citizens.

We therefore strongly urge the Committee to abandon this approach and concentrate instead on identifying and remedying specific abuses. This would appear to be more in keeping with the preservation of those First Amendment rights enumerated and recognized in Section 2(A)(1) of S. 2477, i.e., a citizen's right to petition his government for a redress of grievances; the right to express his opinion freely to his Government; and the right to provide information to his Government.

Beyond these general objections to the underlying concepts of S. 2477, we are also greatly troubled by the following specific provisions in the bill:

1) Section 4(F)(2) and (3) would include in the definition of a lobbyist an organization which spent $200 or more in a quarter on a publication or a letter which could reasonably be expected to reach 500 or more persons. This language is an obvious attempt to monitor so-called "grass roots lobbying". We object strongly to this provision on the grounds that it fails to distinguish adequately between a direct solicitation and informational material that may indirectly lead to a lobbying communication. More fundamentally, however, it would greatly restrict the dissemination of valuable information to members of various organizations. In our own case, most of our 225 affiliated Clubs publish periodical newsletters, magazines, and bulletins. News of legislative developments of interest to AAA members is contained in many of these publications. We feel this is a vital service and an important benefit of AAA membership.

We do not feel that the informational and educational content of many of these publications should be considered "lobbying communications" and that a club should have to register as a lobbyist as required by S. 2477.

Indeed, we can only conclude that the intent of this section is to discourage informing constituents about the true position of their representatives on important questions. It is a vital area of public education which is not covered by the national news media.

2) Section 6 gives the Comptroller General the Authority to make such reasonable, special, periodic, or other examinations of a lobbyist's financial records as he deems necessary for the implementation of the Act. We think that this provision should be much more tightly drawn to protect an organization or individual from frivolous examinations and to protect the integrity and privacy of those records unrelated to lobbying.

3) We have already touched on our objections to the reports required by Section 7 at the beginning of this letter. We do not feel that these requirements will cure any specific abuses and, more importantly, they will have a chilling effect on lobbying efforts by smaller, under-financed organizations as well as individuals.

4) Section 10(9) empowers the Comptroller General to prepare and submit a report on the lobbying efforts of any individual or organization at the request of any one member of Congress. We believe this could lead to serious abuse and could result in countless invasions of privacy for purely political purposes. We think this should be amended to require the majority vote of a Committee at the very least.

We hope you will consider our views and suggestions. We respectfully request that this letter be made a part of the printed hearing record.

Sincerely yours,

John de Lorenzi

John de Lorenzi
Managing Director
Public Policy Division

JdeL/dbc

cc: All members of Senate Government Operations Committee

The American Legion
For God and Country

★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006 ★
(202) 393-4811 ★

NOV 2 2 1975

November 21, 1975

Honorable Abraham Ribicoff, Chairman
Senate Committee on Government Operations
101 Russell Senate Office Building
Washington, D. C. 20510

GOVERNMENT OPERATIONS COM.
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Dear Chairman Ribicoff:

The opportunity to further comment on proposals pending before your Committee to rewrite the 1946 Federal Regulation of Lobbying Act is appreciated.

Our statement submitted June 11, 1975 pertained to S. 815. Subsequently S. 2477, introduced to overcome many of the objections to S. 815, has also been studied by us. The latter bill reflects the considerable amount of work and study by your Committee and Committee staff, and we wish to commend all of those who participated in its drafting. While some of the new provisions do not overcome all of the objections of The American Legion, S. 2477 has eliminated many of the objectionable features of S. 815.

The elimination of duplicate filing so that only an organization and not its employees engaged in lobbying activities must file reports has our support. We have some doubt, however, of the necessity of the detailed record keeping that would be required, particularly the extent of the authority granted the Comptroller General with reference to requiring the keeping of any records he may prescribe as necessary. As mentioned in our previous statement, under 36 U.S.C., §49 of the Federal Act of its incorporation, The American Legion is required and does furnish to the Congress of the United States on or before the first day of January of any given year, a report of its proceedings for the preceding calendar year, which includes a complete financial report. These reports are printed as public documents.

We also question that portion of the bill that would authorize special investigations of lobbyists at the will of individual Members of Congress. While The American Legion does not object to furnishing any and all information concerning its activities to any interested party, we believe that to grant such broad authority for special investigations of lobbying activities of an organization at any time by individual Members could result in harrassment of such organization if their views disagree. We think such authority should be limited to the jurisdictional oversight committees of Congress. In any event, we believe the power of the Comptroller General should be limited as to the reasons for a requested investigation and the frequency that such request could be made within a given period of time.

We have reservations concerning the numerical requirement applicable to a lobbying solicitation directed to 500 persons or more. For example, under certain circumstances the publishing of a news report could be construed as such, and the record keeping required under the circumstances could be overwhelmingly burdensome upon the organization as well as the agency.

Additional information is needed concerning certain other provisions of S. 2477, which we will endeavor to obtain from your Committee staff before offering further recommendations, if any.

The opportunity to extend our remarks on this subject for the hearing record is appreciated.

Sincerely,

CHARLES E. MATTINGLY
Deputy Legislative Director

cc: Ms. Marilyn R. Harris
Senate Committee on Government Operations

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PRSA
PUBLIC RELATIONS SOCIETY OF AMERICA, Inc

845 THIRD AVENUE/NEW YORK, N.Y. 10022/212 826-1750

December 19, 1975

Honorable Abraham Ribicoff
Chairman
Committee on Government Operations
3306 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Public Relations Society of America has followed with a good deal of interest your committee's work in connection with lobbying reform legislation. We believe that the existing law is inadequate and should be strengthened where professional paid lobbyists are concerned. We are concerned, however, with some aspects of S. 2477, which in our judgment, constitute a serious threat to an individual's right to petition government.

In its present form, S. 2477 would have a chilling effect on the efforts of public relations professionals and their employers to become more active in public affairs.

The Public Relations Society of America (PRSA) is the major professional association for public relations professionals with a membership of more than 7,000 throughout the nation. The Society's primary objectives are to advance the standards of the public relations profession and to provide the means for member self-improvement through a series of continuing educational activities, information exchange programs, and research projects at the national and local levels.

PRSA members adhere to the principles of the Society's Code of Professional Standards, a strict code of ethics which governs and encourages high standards of conduct for members of the Society.

PRSA supports lobbying reform legislation as necessary, desirable and in the public interest. At its June 9, 1975, meeting the PRSA

Board of Directors adopted the following resolution:

> "The public relations profession recognizes the need for lobbying reform. As the professional society for more than 7,000 public relations professionals, PRSA supports constructive Congressional reform in the area of registration and reporting by lobbyists. PRSA strongly opposes extension of such requirement to those activities which are in service of the Constitutional rights of individuals, corporations and their representatives to petition their government and their right to privacy."

While some parts of S. 2477 would result in reform, we are concerned about the thrust into the area of indirect or grassroots lobbying.

Over the past decade, public relations professionals have worked diligently to encourage management whether it be in a corporation, trade association, non-profit organization or citizens volunteer organization, to become more involved in government. We have urged them, first of all, to become informed about their government and how government actions can affect their business or private lives. Secondly, we have urged informed and interested citizens to communicate with their government leaders to support those actions which they favor and express their legitimate concerns about measures which they believe can have an adverse impact on their lives.

We have encouraged these activities because we believe Congress and other national leaders want to hear from their constituents. You are not going to hear from your constituents unless they are informed and motivated as a result of effective communications.

Recent surveys indicate that a vast majority of Americans don't even know who their Senators and Congressmen are, let alone that they are interested in their views on legislative matters. Democracy will not work unless individual citizens become more involved, but they will not become involved unless all of us do a better job of communicating with them in connection with government matters which impact their daily lives.

As a result of increased emphasis on public affairs on the part of public relations professionals, national issues are reported on more frequently in employee, stockholder and volunteer member organization publications. Members of Congress and other political leaders are invited more frequently than ever to visit plants and attend meetings to discuss legislation and other issues. Public affairs programing has become an increasingly important part of meetings, workshops and seminars. Public relations professionals have played a key role in promoting these projects and activities in the interest of more enlightened Democracy.

As public relations professionals, we are deeply concerned about extensive, expensive and cumbersome reporting requirements which will stifle such activities. We realize that the legislation does not prohibit such activities, but the registering and reporting requirements will, in many cases, have that practical effect.

The editor of a company publication who has been making an effort to do a better job of informing employees through subtantive reports in the area of public affairs could be forced to revert to reporting on birthdays, barbeques and bowling leagues rather than become a "registered lobbyist".

The head of a volunteer organization would be less likely to speak out on a public issue if the press release on that statement becomes a "covered activity".

Many companies would shy away from inviting members of Congress to visit their facilities or meet with employees or management in small, informal groups if these become "covered contacts".

Newsletters designed to inform members, employees, shareholders or supporters of an organization would be abandoned rather than be construed as "solicitation" to readers to lobby. A communication is incomplete and ineffective if it merely discusses a problem. Interested parties should be reminded that they should let their views be known to Congress.

We believe that legislation which would restrict efforts to inform people about government affairs and encourage them to express their views to their representatives in government, would violate constitutional guarantees of freedom of speech and would impair participatory government.

Accordingly, while we believe the law should be tightened, we believe it should be confined to direct lobbying. The 1946 Act has failed in this regard.

If Congress should determine, unwisely in our opinion, that legislation must extend beyond direct lobbying, certainly Congress should make clear that registration and reporting requirements do not apply to the communication of information about government affairs, or analysis of the potential effects of issues upon the public, or a business, or an organization, or a suggestion that they let their personal views be known to Congress.

James F. Fox, President
Public Relations Society of America

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

5 December 1975

Honorable Abraham Ribicoff, Chairman
Committee on Government Operations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for our views on S. 2477, a bill which would regulate lobbying by providing for public disclosure of certain lobbying activities. Under this bill an individual or organization which meets the definition of "lobbyist" must register and file reports with the Comptroller General.

The Central Intelligence Agency was established by the National Security Act of 1947 primarily to provide policy makers with information on foreign areas and developments. It is not a policy making agency and, consequently, has not been subject to lobbying pressures. Therefore, our interest in legislation of this type has been limited to the concern that overbreadth of language could inhibit this Agency's foreign intelligence gathering mission. Specifically, we have been concerned that a broad definition of the term "lobbying" could be expansively interpreted to cover communications relating to sensitive intelligence matters between this Agency and outside persons. Disclosure of such contacts would be contrary to provisions of law which charge the Director of Central Intelligence with protection of intelligence sources and methods [50 U.S.C. 403] and which exempt CIA from other laws requiring disclosure of Agency organization and personnel [50 U.S.C. 403(g)].

This potential conflict has been raised by several other lobbying bills introduced in this Congress which have embodied broad and ambiguous definitions of the term "lobbying," namely, S. 774, S. 815, S. 2068, and S. 2167. However, S. 2477 has a more precisely defined scope which would not impinge upon the Agency's foreign intelligence mission. Therefore, we prefer the latter bill over earlier proposals. However, we defer to the Department of Justice on the overall merits of S. 2477.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

George L. Cary
Legislative Counsel

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

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31 October 1975

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WASHINGTON, D. C. 20510

Honorable Abraham Ribicoff, Chairman
Committee on Government Operations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request for comments on S. 774 and S. 815, bills designed to regulate lobbying in connection with Congressional and Executive action. This Agency, of course, defers to Congress on matters concerning lobbying directed at Congress. With respect to the regulation of lobbying directed at the Executive branch, our interest is limited to the concern that overbreadth of language will inhibit this Agency's foreign intelligence gathering mission.

S. 815 would require individuals who regularly attempt to influence the "policy-making process" of the Executive branch to register with the Federal Election Commission, record their contacts with Executive branch officials, and file quarterly reports on these contacts with the Commission. Section 3(b) defines "policy-making process" as "any action taken by an Executive employee with respect to any pending or proposed rule, adjudication, hearing, investigation, or other action in the Executive branch." The examples of rules and adjudications cited in the definition suggest an intent to limit the bill to administrative and regulatory actions. Under the doctrine of ejusdem generis, the term "other action," also cited in the definition of "policy-making process," would be confined to the same kinds of public interest matters enumerated, e.g., rules and adjudications.

The Central Intelligence Agency was established by the National Security Act of 1947 to provide policy-makers with information on foreign areas and developments. It is not a policy-making agency; though supplying U. S. policy-makers with intelligence assessments, it does not formulate or advocate policy positions. In light of the above, if section 3(b) were interpreted to apply strictly to influencing the administrative actions of regulatory agencies, the Central Intelligence Agency would have no direct interest in such regulation. I would point out that such coverage would be consistent with the apparent public interest objectives of the legislation.

However, section 3(b) could be interpreted to cover the administrative actions of all Executive agencies. It could also be construed most broadly to cover "any action" taken by an Executive employee. If either of these two constructions is intended, situations might arise in which the proposed regulations would conflict with this Agency's statutory charter. For example, it is

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

possible that officials of a private company which has developed a new intelligence technology, e.g., an electronic collection device, would seek to demonstrate the feasibility and utility of the system to the Agency. Under sections 4(a)(4) and 6(c), (d), (e), (f), (h), (i), the communicating official would be required to disclose the identities of Agency personnel and the subject matter of the communication. This would result in the disclosure of sensitive information and would conflict with the statutory authorities which charge the Director of Central Intelligence with the protection of Intelligence Sources and Methods (50 U.S.C. 403), and which exempt CIA from laws requiring disclosure of Agency organization and personnel [50 U.S.C. 403(g)].

These comments also apply to section 2(2) of S. 774, which defines policy-making process as "any action taken ... with respect to any rule, adjudication, or other policy matter in the Executive Branch."

If it is the intent of the Committee to apply the bill to the administrative actions of regulatory agencies, I would merely suggest that this scope be more clearly defined. If broader application is contemplated, however, it is requested that some accommodation be made for the considerations discussed above. We would be pleased to consult with the Committee in working out appropriate modifications.

Because of its broader coverage, section 7 of S. 774 raises more serious problems. S. 815 has no comparable provision. Under section 7, certain Executive branch employees would be required to record each oral or written communication received from "outside parties expressing an opinion or containing information" with respect to the policy-making process. These records, available for public inspection, would contain the identities of the contacted employee and the outside party, the subject matter of the communication, and the action taken in response to the communications.

It is noted that this section uses the undefined term "outside party" in lieu of the term "lobbyist" used elsewhere in the bill and defined in section 2(1). Also, the phrase "communication ... expressing an opinion or containing information" is used rather than the term "lobbying" defined in section 2(9) as communication made to influence the policy-making process. This shift in language and the potentially broad interpretation of "policy-making process" would extend the requirements of section 7 to communications not generally considered lobbying activities. Such overbroad coverage would seriously impair this Agency's ability to function.

The requirement that the opinions or information of any outsider concerning "policy matters" be made public would make impossible the essential confidentiality upon which this Agency's outside sources of information insist. Where sensitive matters are involved, this requirement would impair CIA's access to outside judgments and viewpoints--such as those which a Congressman, academician, former government official, or foreign intelligence service might offer.

I urge that section 7 of S. 774, if adopted, be strictly limited to traditional lobbying activities by lobbyists, as defined in section 2(10) of the bill. Additionally, as discussed above with respect to section 3(b) of S. 815 and section 2(2) of S. 774, the proposed disclosure of the identity of the contacted employee, the subject matter of the communication, and the action taken in response to the communication would conflict with statutory authorities pertaining to the protection of Intelligence Sources and Methods (50 U.S.C. 403) and exempting the CIA from laws requiring disclosure of Agency organization and personnel [50 U.S.C. 403(g)].

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director

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UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

CHAIRMAN

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November 7, 1975

Honorable Abe Ribicoff
Chairman
Committee on Government Operations
United States Senate
Washington, D. C. 20510

GOVERNMENT OPERATIONS COM.
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WASHINGTON, D. C. 20510

Dear Mr. Chairman:

This is in further reply to your request for the Commission's views on S. 2477, a bill "To provide more effective public disclosure of certain lobbying activities to influence issues before the Congress and the executive branch, and for other purposes."

We support the stated purposes of the bill to provide for the disclosure to the Congress, the executive branch, and to all members of the public of the activities of organizations or individuals who are paid to engage on their own behalf in efforts to influence issues before Congress or the executive branch, without interfering with the right to petition the Government for redress of grievances. However, since the responsibilities of the Civil Service Commission lie in the area of personnel management and since the bill does not impose functions or duties on any officers or employees of the executive branch, other than those in the Department of Justice, we defer to that Department with respect to the merits of the bill.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

Robert Hampton
Chairman

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-129874 November 13, 1975

The Honorable Abraham Ribicoff
Chairman, Committee on Government
Operations
United States Senate

Dear Mr. Chairman:

Reference is made to your letter of October 8, 1975, requesting our views and recommendations on S. 2477, a bill to provide more effective public disclosure of certain lobbying activities to influence issues before the Congress and the executive branch, and for other purposes.

We view S. 2477 as a significant improvement over the existing legislation, the Federal Regulation of Lobbying Act of 1946, which it would repeal. The bill eliminates two weaknesses in the existing legislation noted in our report, "The Federal Regulation of Lobbying Act - Difficulties in Enforcement and Administration," GGD-75-79: the lack of a clear definition of a lobbyist and the absence of investigative and enforcement powers necessary for effective monitoring of lobbying activities.

The bill more clearly defines lobbyist by eliminating the Act's "principal purpose" limitation, which has caused problems in determining who must comply with the current Act. Under the bill, any person or organization who receives any income other than salary, and makes one or more lobby communications in a quarter, or makes one or more solicitations which can be expected to reach 500 persons or more, is a lobbyist. Also, any organization is a lobbyist if in one quarter, it (1) makes 12 or more lobbying communications, (2) spends $200 or more to make lobbying solicitations that reach or can be expected to reach 500 persons, or (3) makes one or more solicitations in a quarter that reach or can be expected to reach 50 or more officers or employees of an organization, or 12 or more affiliated organizations. The bill also broadens the definition of lobbying to include solicitations and communications with employees of Congress and the executive branch. We note, however, that the term "lobbying communication" is limited to efforts to influence

issues before the Congress, while the term "lobbying solicitation" encompasses efforts to influence an issue before the executive branch as well.

The bill places responsibility for administration with the Comptroller General. It provides the Comptroller General with the right of access to records, investigative authority, including subpoena power, and enforcement powers that are needed to make the law effective. While the administration of lobbying activities under the bill represents an additional responsibility of some magnitude, the Comptroller General does not object to his designation as administrator of the Act. However, in view of the extensive new litigation responsibilities assigned, which may well be of a highly specialized nature for limited periods of time, we would prefer more flexibility in our authority to obtain expert legal assistance. Section 9(a)(6) of the bill allows the Comptroller General to utilize his own staff attorneys or to appoint outside attorneys as temporary employees, limited to the rate payable to a GS-18. We believe there may be a number of occasions when it may be advantageous for the Comptroller General to contract with leading experts in the field to represent him in carrying out certain of his duties and functions under the Act. Such individuals or firms would not be serving as employees and might not be attainable at all if the compensation were limited as proposed. Accordingly, we recommend deletion of lines 11 through 13 of p. 24 of the bill beginning with the words "through attorneys," and lines 17 through 22 of p. 24, and substituting instead on line 11, "through attorneys of his own selection." This is the language used for the same purpose in section 1016 of Public Law 93-344, the Congressional Budget and Impoundment Control Act of 1974, 31 U.S.C. § 1301 note.

As a technical matter, we note that on page 10, lines 3-5, and page 25, lines 18 and 19, reference is made to sections of the Federal Election Campaign Act of 1971 which were added by the 1974 Amendments to that Act. Although we recognize that reference to the Act itself includes such amendments, we suggest that the words "as amended" be added to avoid confusion.

Sincerely yours,

Deputy Comptroller General
of the United States

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

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November 13, 1975

Com

Honorable Abraham Ribicoff
United States Senate
Washington, D.C. 20515

Dear Mr. Chairman:

This replies to your letter of October 8, 1975, requesting the views of this Department on S. 2477, a bill "To provide more effective public disclosure of certain lobbying activities to influence issues before the Congress and the executive branch, and for other purposes."

This Department defers to the position the Department of Justice may take with regard to enactment of the bill.

The bill is called the "Lobbying Act of 1975." It is designed to enable Government officials to evaluate expressions by individuals and groups by requiring public disclosure of the identity, expenditures, and activities of those persons who, for consideration, engage in organized efforts to persuade members of the legislative or executive branches of the Federal Government to take specific actions. Each lobbyist, as defined in the bill, is required to register with the Comptroller General not later than 15 days after becoming a lobbyist. The bill prescribes the form of the registration. Persons covered by the bill are required to keep records as detailed in the bill which are available for inspection by the Comptroller General, and to file periodic reports with the Comptroller General. The bill grants the Comptroller General certain powers to enforce its provisions, and prescribes the duties of the Comptroller General. The bill provides civil and criminal penalties for violation of its provisions. It repeals the Federal Regulation of Lobbying Act, 2 U.S.C. 261 et seq.

The Federal Regulation of Lobbying Act (Act), the existing law regulating the activities of lobbyists, requires lobbyists regulated by that Act to register and file detailed reports with the Secretary of the Senate and Clerk of the House of Representatives. The criminal provisions of the Act are enforced by the Department of Justice.

This Department does not administer the Act and has no experience working with it. This information is, we believe, within the knowledge of the Department of Justice. We are, therefore, unable to determine the need for the changes embodied in S. 2477.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Richard A. Ashworth

RICHARD A. ASHWORTH
Deputy Under Secretary

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

November 4, 1975

Honorable Abraham Ribicoff
United States Senate
Washington, D.C. 20510

Dear Senator Ribicoff:

This refers to your letter of March 17, 1975, requesting the views of this Department on S. 815, a bill "To provide for the public disclosure of lobbying activities with respect to Congress and the executive branch, and for other purposes."

This Department defers to the position the Department of Justice may take with regard to enactment of the bill.

The bill terms itself the "Open Government Act of 1975." It is designed to enable Government officials to evaluate expressions by individuals and groups by requiring public disclosure of the identity, expenditure, and activities of those persons who, for consideration, engage in organized efforts to persuade members of the legislative or executive branches of the Federal Government to take specific actions. Each lobbyist, as defined in the bill, is required to file a notice of representation with the Federal Election Commission not later than 15 days after first becoming a lobbyist. The bill prescribes the contents of the notices of representation. Persons covered by the bill are required to keep records as detailed in the bill which are available for inspection by the Commission, and to file periodic reports with the Commission. The bill grants the Commission certain powers to enforce its provisions, and prescribes the duties of the Commission. The bill provides criminal penalties for violation of its provisions. It repeals the Federal Regulation of Lobbying Act, 2 U.S.C. 261 et seq.

The Federal Regulation of Lobbying Act (Act), the existing law regulating the activities of lobbyists, requires lobbyists regulated by that Act to register and file detailed reports with the Secretary of the Senate and Clerk of the House of Representatives. The criminal provisions of the Act are enforced by the Department of Justice.

This Department does not administer the Act and has no experience working with it. This information is, we believe, within the knowledge of the Department of Justice. We are, therefore, unable to determine the need for the changes embodied in S. 815.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. Phil Campbell
Under Secretary

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

November 11, 1975

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Honorable Abraham Ribicoff
Chairman
Committee on Government Operations
United States Senate
Washington, D. C. 20510

GOVERNMENT OPERATIONS COMM.
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WASHINGTON, D. C. 20510

Dear Mr. Chairman:

Subject: S. 2477, 94th Congress (Ribicoff, et al)

This is in response to your request for the views of this Department on S. 2477, a bill "To provide more effective public disclosure of certain lobbying activities to influence issues before the Congress and the executive branch, and for other purposes."

S. 2477 would require lobbyists and lobbying organizations to register annually with the Comptroller General and to file quarterly reports of lobbying activities. The nature of the information included in the quarterly reports would depend on whether the lobbying entity is classified under the bill as a lobbyist retained for pay to lobby directly, an organization lobbying for itself, or a lobbyist which solicits. The General Accounting Office would have primary responsibility for civil enforcement of the new law.

Although this Department supports legislation directed toward improving the existing laws regulating lobbying activities, we would defer to the Department of Justice with respect to the relative merits of this particular bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Douglas McPaker

for Robert R. Elliott

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 22 1975

Dear Mr. Chairman:

Your Committee has requested the views of this Department on S. 2477, a bill "To provide more effective public disclosure of certain lobbying activities to influence issues before the Congress and the executive branch, and for other purposes."

S. 2477, cited as the "Lobbying Act of 1975" requires all lobbyists to register with the Comptroller General, and provides that office, in cooperation with the Federal Election Commission, with broad authority in the control and conduct of lobbying activities.

While we would have no objection to enactment of the bill, we defer to the views of the Department of Justice as to the need for and advisability of its enactment.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

Royston C. Hughes

Assistant Secretary of the Interior

Honorable Abraham Ribicoff
Chairman, Committee on
Government Operations
United States Senate
Washington, D.C.

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

PH- FYI

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

GENERAL COUNSEL

Honorable Abraham A. Ribicoff
Chairman, Committee on Government Operations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Transportation (DOT) on S. 774, a bill

> To regulate lobbying and related activities.

This bill broadly defines "lobbying" as

> . . . a communication or the solicitation or employment of another to make a communication with a Federal officer or employee in order to influence the policymaking process . . . .

The "policymaking process" is earlier defined as

> any action taken by a Federal officer or employee with respect to any bill, resolution, or other measure in Congress, or with respect to any rule, adjudication, or other policy matter in the executive branch . . . .

With respect to such lobbying, this bill would (i) impose filing, record keeping, and reporting requirements on lobbyists; (ii) impose record keeping requirements on Federal officials who are the objects of lobbying; and (iii) charge the Federal Election Commission with the administration and enforcement of these regulations.

Of particular interest to the Department is section 7, which would require executive branch officials and employees in grades GS-15 or above, and certain other persons, to make a record of each oral or written communication that they receive directly or indirectly or by

referral from outside parties expressing an opinion or containing information bearing upon the policymaking process. The records would include:

(1) an identification of the recipient of the communication;

(2) the date of receipt;

(3) an identification of the sender of the communication and of the person on whose behalf the communication was sent;

(4) a summary of the communication;

(5) copies of any written communication in their original form; and

(6) a description of any action taken by the recipient in response to the communication.

The records would be placed in public files within two days after the receipt of the communication. Pursuant to section 10(d), any official or employee who is subject to section 7 and who knowingly and willfully falsifies, forges, or fails to file any of the required records would be subject to a fine of not more than $5,000 or imprisonment of not more than 2 years, or both.

We agree with the bill's goal of ensuring that lobbying be subject to public scrutiny, and note that in the area of rulemaking, the requirements of the bill are similar to those provided in the present DOT docket system as supplemented by DOT Order 2100.2, "Policies for Public Contacts in Rule Making." That order requires reports to the rulemaking dockets of the substance of all relevant meetings with members of the public. Those reports must include at a minimum

(1) a list of the participants in the meeting;

(2) a summary of the discussion held at the meeting; and

(3) a specific statement of any commitments made by DOT personnel as a result of the contact.

The scope of the proposed recording requirements and attendant penalties, however, goes well beyond that of the present Department system. Records must be kept of any contacts involved in policy making, which includes not only rulemaking, but also any bill, resolution, or other measure in Congress, and any rule, adjudication, or other policy matter in the executive branch. Such a definition of policymaking is too broad in several respects. As defined it would include making recommendations regarding internal administrative affairs. We are not convinced that the sponsors of this bill realize the reach of their proposal. We urge that "policymaking" be redefined to exclude decisions and recommendations regarding internal administrative affairs. The bill's definition of "policymaking" might also be interpreted to include communications with Department contractors and grantees as well as those applying for contracts and grants, an unreasonably broad definition which would make compliance burdensome. While the language in section 2(9)(A) might be intended and can be read to exclude such communication from the reporting requirements, such exclusion should be made explicit.

For the employees who are covered by the bill, some ambiguity may exist in the definition of the type of contacts which must be recorded. This ambiguity, together with the penalties for violating record keeping requirements, could reduce the flow of useful information in the executive branch. It is essential to the functioning of an Executive Department with regulatory responsibilities such as DOT to be able to discuss with industry and with the public in general, not only overall policy matters involved in rulemaking or regulation, but technical details that may eventually influence the ultimate policy in such matters. Federal employees could be plagued by uncertainty whether a communication or solicitation would be considered to have been initiated by them or by outside parties, the former being a class of communication exempted from the bill by section 2(9)(B). This would be especially likely to occur when there is continuing back-and-forth communication between particular employees and outside parties. As a result of such uncertainty, Federal employees might sharply curtail their contacts with the public for fear of subjecting themselves to the bill's penalty provisions. Some of the impact of this uncertainty can be reduced by narrowing the definition of policy making. Complete clarification, however, requires that the bill address squarely the special case of these continuing conversations.

For the stated reason, while this Department supports the goals of S. 774, it opposes the enactment of the bill in its present form.

In addition to the foregoing comments regarding the general desirability of this bill, we would like to offer some technical comments on particular sections.

Section 7(a)--We are uncertain which Federal officials and employees would be subject to the record keeping requirements. Along with persons in grades GS-15 or above and persons in any of the executive levels under Title 5, U.S.C., section 7(a) includes persons

> . . . who are designated by any person to whom this subsection otherwise applies as being responsible for making or recommending decisions affecting the policy-making process . . . .
> (Emphasis added)

There are presently no formal designations of responsibility in DOT for making or recommending policy decisions except the delegations of authority published in the Federal Register. These delegates would almost certainly be persons ". . . to whom this subsection otherwise applies . . ." by virtue of their being in a GS-15 or higher grade or in an executive level grade.

To give content to the term "designated" it would have to be interpreted to mean "expressly designated for the purposes of this Act." To implement the concept of designation, there would have to be a requirement in the bill that such designations be made.

The requirement in this subsection for record keeping is overinclusive in several respects. It would unnecessarily require record keeping concerning written submissions to our rulemaking dockets unless the communication itself would serve as the record thereof. The requirement that a record be made of each communication would mean that insignificant as well as significant communications would have to be recorded to no publicly useful end. The breadth of the recording requirement would force top level officials to divert a significant portion of their time from professional duties to routine documentation activities.

Section 7(b)--The requirement that records be placed in the appropriate public file within two working days would be very cumbersome. It would require that such record keeping take priority over all other department activity.

Section 7(c)--If this bill is to be enacted, provision should be made for preserving the confidentiality of materials exempt from disclosure under the Freedom of Information Act.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of these views to the Committee.

Sincerely,

R. F. McCaffrey Jr.

for John Hart Ely

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 12 1975

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OFFICE OF THE ADMINISTRATOR

Dear Mr. Chairman:

We are pleased to have the opportunity to present our views on S. 2477, the Lobbying Act of 1975.

The purpose of S. 2477 is to provide for the disclosure of lobbying activities without interfering with an individual's right to communicate his views on any issue to Congress.

Under the bill's provisions, only an organization or an individual retained by someone else to lobby for him, could be a lobbyist. To be a lobbyist, there is the additional requirement that the individual or organization must make twelve communications with a Congressman or his staff for the purpose of influencing legislation during a three month period. Thus, organizations whose contacts are infrequent are excluded from the bill's strictures upon lobbying.

The proposed legislation also covers indirect lobbying activities where lobbyists mobilize public support or opposition for any issue before Congress or the executive branch. If the solicitation of support or opposition may reasonably be expected to reach five hundred or more members of the general public and the cost of the solicitation to prepare and distribute exceeds two hundred dollars, then the activity is considered lobbying.

The bill requires the lobbyist to register and report lobbying activities. Failure to comply with the requirements of S. 2477 exposes the lobbyist to a potential fine of ten thousand dollars and imprisonment for up to five years.

The Environmental Protection Agency supports the concept of a strong lobbying bill such as S. 2477. For government to

operate effectively, the pressures of special interest groups must be identified and basic information about lobbying made public. However, with respect to the provisions of S. 2477, we defer to the Department of Justice.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the President's program.

Sincerely yours,

Russell E. Train
Administrator

Honorable Abraham Ribicoff
Chairman, Committee on
Government Operations
United States Senate
Washington, D.C. 20510

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EXECUTIVE OFFICE OF THE PRESIDENT
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WASHINGTON, D.C. 20503

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NOV 5 1975

Honorable Abraham Ribicoff
Chairman, Committee on Government
Operations
3308 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

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Dear Mr. Chairman:

This is in reply to your request for our views on S.2477, a bill, "To provide more effective public disclosure of certain lobbying activities to influence issues before the Congress and executive branch, and for other purposes."

S. 2477 appears to reflect a more current consensus among most of the sponsors of S. 744, S. 815, and S. 2167 with regard to remedying the deficiencies inherent in the Federal Regulation of Lobbying Act of 1946. In testimony before your Committee on November 4, 1975, the Department of Justice indicated that further alteration of certain provisions of S. 2477 is necessary to strengthening this legislation. Accordingly, we defer to the Department of Justice and urge the Committee to consider Justice's comments and suggested amendments in its report on the bill.

Sincerely,

James M. Frey

James M. Frey
Assistant Director
for Legislative Reference

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FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

November 7, 1975

Honorable Abraham Ribicoff
Chairman
Committee on Government Operations
United States Senate
Washington, D. C. 20510

Re: S. 2477

Dear Mr. Chairman:

The Federal Election Commission appreciates your request for Commission comment on S. 2477 -- The Lobbying Act of 1975. This bill is designed to provide for more effective disclosure of certain lobbying activities intended to influence issues before Congress and the Executive Branch.

The Comptroller General will be charged with monitoring the disclosure provisions of S. 2477. The Comptroller General will develop a public access capability through the use of a computer cross-indexing system established jointly with the Commission. This indexing system would contain the reports of all "lobbyists" and campaign reports of all candidates and committees filing under the Federal Election Campaign Act, as amended.

Ever since its formation, the Commission has had close working relationship with the Office of the Comptroller General and the responsibilities assigned to the Federal Election Commission by S. 2477 can be carried out effectively.

Thank you for giving the Federal Election Commission this opportunity to comment on S. 2477.

Sincerely,

Neil Staebler
Vice Chairman

Federal Maritime Commission
Washington, D.C. 20573

Office of the Chairman

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November 11, 1975

Honorable Abraham Ribicoff
Chairman, Committee on Government
Operations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in reply to your request for the views of the Federal Maritime Commission with respect to S. 2477, a bill

> To provide more effective public disclosure of certain lobbying activities to influence issues before the Congress and the executive branch, and for other purposes.

In attempting to regulate lobbying activities associated with the executive and legislative branches of the federal government, S. 2477 would impose strict registration, record keeping, and reporting requirements upon individual or organizational "lobbyists".

Section 5 of S. 2477 would, among other things, require every "lobbyist" as defined in Section 4(a) of the bill, to register with the Comptroller General not later than fifteen days after assuming that role, and would further require identification of each person on whose behalf the lobbyist's services have been retained, a description of the financial arrangements and other conditions under which the lobbyist's services have been retained, and a projection of each officer, director, and employee of the lobbyist's whom the lobbyist expects to make one or more oral lobbying communications. Section 5 also requires for timely updating of lobbying registration filings.

Section 6 of the bill would require each lobbyist, and each person who retains a lobbyist, to maintain and preserve such financial and other records as may be prescribed by the Comptroller General for effective implementation of the bill.

Section 7 of S. 2477 provides for the filing of quarterly reports with the Comptroller General covering a broad range of lobbying activities, including identification of lobbyists and the persons or organizations they represent, recordation of certain gifts or loans of anything of value

exceeding $50 in amount or value made to any member, officer, or employee of the Congress, and other specific provisions for submission decribing the scope and nature of lobbying communications and solicitations, including issues subjected to lobbying, persons or organizations involved, and expenses incurred.

On September 23rd of this year the Federal Maritime Commission informed the House Committee on the Judiciary of its opposition to Section 7 of H.R. 15, a bill similar in nature to S. 2477 but far different in its application. As we stressed in our letter at that time, the Commission recognized the good intentions of the sponsors and advocates of H.R. 15. However, we urged deletion of Section 7 of the bill which, while imposing rather stringent record keeping and reporting requirements upon lobbyists, would also be applicable to

> All officials and employees of the executive branch in grades GS-15 or above in the General Schedule, or in any of the executive levels under title 5 of the United States Code, or who are designated by any person to whom this subsection otherwise applies as being responsible for making or recommending decisions affecting the policymaking process in the executive branch . . . .

Inasmuch as S. 2477 has no similar provision requiring reporting or record keeping by Federal Maritime Commission employees and therefore imposes no additional duties or burdens upon the Commission or its personnel, we offer no objection to its passage. Our opposition to Section 7 of H.R. 15 was founded on two premises: first, our belief that civil servants would be hindered in the performance of their duties by potentially time consuming chores unrelated to their vital task of serving the public, and second, the considerable financial costs to the government that would be incurred by its implementation. S. 2477 places the burdens of compliance and expense only upon those who seek to influence the legislative and executive processes, as should be the case.

At a time when public opinion polls suggest confidence in the federal government is at a low ebb, it is conceivable that the passage of S. 2477 may aid in restoring the public's faith that its interests are protected and considered of paramount importance to those who serve at the federal level. While contact with specialized interest groups is an inherent part of the federal system, the establishment of a reasonable method to check the scope and nature of such contact can only serve to benefit the public at large.

In conclusion, we recognize S. 2477 to be a consensus bill which attempts to reconcile differences among numerous lobbying bills introduced earlier

in this session of Congress, and would therefore expect the bill to undergo considerable amendment as hearings and debate progress. We further emphasize our deference to the expertise of the Department of Justice in commenting upon any legal issues or technicalities that may now exist in connection with this bill.

The Office of Management and Budget has advised that there would be no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

Helen Delich Bentley

Helen Delich Bentley
Chairman

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DEC 5 1975

OFFICIAL
DO NOT

Honorable Abraham Ribicoff
Chairman
Committee on Government Operations
United States Senate

Dear Senator Ribicoff:

S. 2477, A BILL "TO PROVIDE MORE EFFECTIVE PUBLIC DISCLOSURE OF CERTAIN LOBBYING ACTIVITIES TO INFLUENCE ISSUES BEFORE THE CONGRESS AND THE EXECUTIVE BRANCH, AND FOR OTHER PURPOSES."

This responds to your October 8, 1975 letter requesting the Nuclear Regulatory Commission's views on S. 2477, a bill to provide more effective public disclosure of certain lobbying activities.

The Nuclear Regulatory Commission supports the general purpose of the bill. We think that the public interest will be served by legislation which provides for the disclosure to the Congress, the Executive Branch, and to all members of the public of lobbying efforts, so long as that disclosure does not interfere with the right to petition the Government for a redress of grievances.

The Commission notes that S. 2477 is the product of lengthy deliberations by the Committee and the Department of Justice to rectify the perceived inadequacies of the Federal Regulation of the Lobbying Act of 1946. We have reviewed the statement submitted to the Committee on November 4, 1975, by John C. Keeney, Deputy Assistant Attorney General, Criminal Division, and find ourselves in general agreement with the views of the Department of Justice.

We appreciate the opportunity to review and comment on S. 2477.

Sincerely,

William A. Anders
Chairman

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Congress of the United States
OFFICE OF TECHNOLOGY ASSESSMENT
WASHINGTON, D.C. 20510

EMILIO Q. DADDARIO
DIRECTOR
DANIEL V. DeSIMONE
DEPUTY DIRECTOR

OCT 29 1975

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Honorable Abraham Ribicoff
Chairman, Committee on
Government Operations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Thank you very much for your letter of October 8, 1975, transmitting S. 2477 for comment.

At present, OTA does not have underway or currently planned any analysis that would bear upon the need for, or purposes of, this specific legislation.

Sincerely,

EMILIO Q. DADDARIO
Director

POSTAL RATE COMMISSION
Washington, D.C. 20268

Clyde S. DuPont
CHAIRMAN

Honorable Abraham Ribicoff
Chairman, Committee on
Government Operations
United States Senate
Washington, D. C. 20510

APR 11 1975

Dear Chairman Ribicoff:

This is in response to your recent letters requesting our comments on S. 774, a bill "to regulate lobbying and related activities;" and S. 815, a bill "to provide for the public disclosure of lobbying activities with respect to Congress and the executive branch, and for other purposes."

This Commission supports the general concept expressed in these bills, i.e., that information about lobbying activities, as defined in S. 774 and S. 815, should be accessible to the public. However, inasmuch as they principally concern filing and record maintenance requirements affecting lobbyists, we will confine our comments to § 7 of S. 774, which would require certain "officials and employees of the executive branch * * * [to] prepare a record of each * * * communication received * * * from outside parties * * *."

Since the Commission's establishment in 1970, upon enactment of the Postal Reorganization Act (39 U.S.C. §§ 101, et seq.), we have conducted our regulatory proceedings on hearing records available to the general public. Also, as we explain below, our activities are governed by stringent ex parte rules resulting in the preparation and public distribution of the type of record contemplated by § 7. Hence, the sole objective of the proposed legislation, insofar as it is directed to the functions of an agency such as ours, is already being achieved. 1/

1/ Senator Percy, in introducing S.774, stated that this bill "has one simple purpose--to bring [lobbying] activities [in the Congress and the executive branches] out in the open." 121 Cong. Rec. S 2277 (daily ed. Feb. 20, 1975). A similar statement, concerning S.815 was presented by Senator Stafford, 121 Cong. Rec. S 2455, et seq. (daily ed. Feb. 24, 1975).

The Nature of the Commission's Work. This Commission, which is an independent establishment of the executive branch of the Government (39 U.S.C. § 3601), conducts formal proceedings to determine the reasonableness of postal rates and fees (39 U.S.C. § 3622) and mail classifications (39 U.S.C. § 3623). The Commission may also hold hearings on proposals by the Postal Service for changes "in the nature of postal services which will generally affect service on a * * * substantially nationwide basis" (39 U.S.C. § 3661); and it has jurisdiction to consider complaints that postal rates and services do not conform to the policies of the Act.

The Commission has thus undertaken the ratemaking and mail classification functions formerly performed by Congress. Pursuant to the Act, five Presidentially-appointed members of the Postal Rate Commission transmit recommended decisions on these matters to the Governors of the Postal Service [39 U.S.C. § 3624(c)], whose final decisions are subject to judicial review (39 U.S.C. § 3628). The Commission's recommended decisions are issued after full evidentiary hearings are held in accordance with the Administrative Procedure Act (5 U.S.C. §§ 556 and 557). Typically, more than 50 intervenors participate in our proceedings and present comprehensive exhibits and testimony--both written and oral--during the development of voluminous formal records.

Section 7 of S. 774 and the Commission's Ex Parte Rules. One of the purposes of the Act was to remove the influence of lobbying activities from the postal ratemaking process. 1/ To help guarantee achievement of this purpose, and in order to fully insulate Commission decisions from possible outside pressures, stringent prohibitions against ex parte communications were included in our Standards of Conduct (39 C.F.R. §§ 3000.735-101, et seq., particularly 501 and 502) and in our Rules of Practice and Procedure (id. at § 3001.7) when the Commission was created.

1/ Congressman Udall alluded to these circumstances during the floor debate on the Act, stating: "Fixing postal rates under intense lobbying pressures, as done in the past, produces neither fair and adequate rates, nor does much to strengthen the role of Congress." (116 Cong. Rec. 27605.)

The prohibitions contained in the Commission's rules include, and go considerably beyond, the provisions of § 7 of S. 774, entitled "Records of Outside Contacts." (We note that S. 815 does not contain a similar provision.) Under the Commission's Standards of Conduct, no employee, regardless of his or her title or grade level, may participate in any ex parte communication, either oral or written, with any person regarding (1) a particular matter (substantive or procedural) at issue in contested proceedings before the Commission or (2) the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission [id. at § 3000.735-501(a)]. If an ex parte communication, either oral or written, should occur inadvertently notwithstanding the above prohibition, a full written report is required to be submitted within two days. All such reports are available to the public as part of the public records of the Commission. If the ex parte communication concerns a particular matter at issue in a proceeding before the Commission, a copy of the report is required to be sent to each party to the proceeding [id. at § 3000.735-502].

The Commission's Rules of Practice and Procedure contain similar strictures against ex parte communications between parties to Commission proceedings and all Commission employees (39 C.F.R. § 3001.7). Even communications between our litigation staff and parties on purely procedural matters which are not at issue must be reported monthly, and they are available for public inspection. It is the Commission's opinion that these rules, by protecting our staff from extraneous pressures, ensure that our decisions will be based exclusively on formal hearing records, as required by the Act [39 U.S.C. § 3624(a)].

Technical note. The definition of "lobbying" in S. 774, § 2(9)(A), and the related exemption clause, excludes written communications made "at the request of [an] * * * agency," but not oral communications. As drafted, the provision permits an inference to be drawn that (1) testimony presented from a witness stand or (2) oral argument by counsel in regulatory proceedings could constitute lobbying. Given the purpose of the bill, it would appear that these types of oral communication should be expressly exempted, particularly since they are made on a hearing record available to

the general public. The analogous provision of S. 815, i.e., § 3(i)(1), would not seem to present the same problem, since testimony before a federal agency would seem to be exempted from the anti-lobbying provision, whether oral or written.

The Office of Management and Budget has advised us that the Administration has taken no position on S. 774 and S. 815.

Very truly yours,

Clyde S. DuPont
Chairman

POSTAL RATE COMMISSION
Washington, D.C. 20268

Clyde S. DuPont
CHAIRMAN

OCT 31 1975

Honorable Abraham Ribicoff
Chairman, Committee on
Government Operations
United States Senate
Washington, D.C. 20510

Dear Chairman Ribicoff:

This is in response to your recent letter requesting our views regarding S. 2477, a bill "[t]o provide more effective public disclosure of certain lobbying activities to influence issues before the Congress and the executive branch, and for other purposes.

This Commission supports the general concept expressed in this bill, i.e., that information about lobbying activities, as defined in S. 2477, should be accessible to the public. Furthermore, we believe that S. 2477 places the obligation to disclose such activities where it is most needed--namely, upon the lobbyists themselves. As we explain below, this agency already makes considerable efforts to provide full public disclosure of the kind of communications contemplated in S. 2477, primarily by conducting our regulatory proceedings on hearing records available to the general public and by observance of the stringent ex parte rules contained in our regulations. It is our opinion, therefore, that S. 2477 would appropriately supplement our efforts without creating unnecessary and wasteful duplication of those efforts.

The Nature of the Commission's Work. This Commission, which is an independent establishment of the executive branch of the Government (39 U.S.C. § 3601), conducts formal proceedings to determine the reasonableness of postal rates and fees (39 U.S.C. § 3622) and mail classifications (39 U.S.C. § 3623). The Commission may also hold hearings on proposals by the Postal Service for changes "in the nature of postal services which will generally affect service on a * * * substantially nationwide basis" (39 U.S.C. § 3661); and it has jurisdiction to consider complaints that postal rates and services do not conform to the policies of the Act.

The Commission has thus undertaken the ratemaking and mail classification functions formerly performed by Congress. Pursuant to the Act, five Presidentially-appointed members of the Postal Rate Commission transmit recommended decisions on these matters to the Governors of the Postal Service [39 U.S.C. § 3624(c)], whose final decisions are subject to judicial review (39 U.S.C. § 3628). The Commission's recommended decisions are issued after full evidentiary hearings are held in accordance with the Administrative Procedure Act (5 U.S.C. §§ 556 and 557). Typically, more than 50 intervenors (many of whom are associations representing thousands of firms) participate in our proceedings and present comprehensive exhibits and testimony--both written and oral--during the development of voluminous formal records.

The Commission's Ex Parte Rules. One of the purposes of the Act was to remove the influence of lobbying activities from the postal ratemaking process. 1/ To help guarantee achievement of this purpose, and in order fully to insulate Commission decisions from possible outside pressures, stringent prohibitions against ex parte communications were included in our Standards of Conduct (39 C.F.R. §§ 3000.735-101, et seq., particularly 501 and 502) and in our rules of practice and procedure (id., at § 3001.7) when the Commission was created.

The Commission's rules impose upon its officials and employees requirements that are both extensive and strict. Under the Commission's Standards of Conduct, no employee, regardless of his or her grade level, may participate in any ex parte communication, either oral or written, with any person regarding (1) a particular matter (substantive or procedural) at issue in contested proceedings before the Commission [id., at § 3000.735-501]. If an ex parte communication, either oral or written, should occur inadvertently notwithstanding the above prohibition, a full written report is required to be submitted within two days. All such reports are available to the public as part of the public records of the Commission. If the ex parte communication concerns a particular matter at issue in a proceeding before the Commission, a copy of the report is required to be sent to each party to the proceeding (id., at § 3000.735-502).

1/ Congressman Udall alluded to these circumstances during the floor debate on the Act, stating: "Fixing postal rates under intense lobbying pressures, as done in the past, produces neither fair and adequate rates, nor does much to strengthen the role of Congress." (116 Cong. Rec. 27605.)

The Commission's rules of practice and procedure contain similar structures against ex parte communications between parties to Commission proceedings and all Commission employees (39 C.F.R. § 3001.7). Even communications between our litigation staff and parties on purely procedural matters which are not at issue must be reported monthly, and they are available for public inspection. It is the Commission's opinion that these rules ensure that our decisions will be based exclusively on formal hearing records, as required by the Act [39 U.S.C. § 3624(a)], and will also inform the public of the types of communications with which S. 2477 is concerned. Therefore, we believe that our system of public disclosure and the provisions of S. 2477 could form a compatible and mutually complementary whole.

Very truly yours,

Clyde S. DuPont
Chairman

POSTAL RATE COMMISSION
Washington, D.C. 20268

Clyde S. DuPont
CHAIRMAN

SEP - 0 1975

SEP 24 1975
GOVERNMENT OPERATIONS COMM.
RECEIVED
SEP 26 1975
WASHINGTON, D.C. 20510

Honorable Abraham Ribicoff
Chairman, Committee on
Government Operations
United States Senate
Washington, D.C. 20510

Dear Chairman Ribicoff:

This is in response to your recent letter requesting our views regarding S. 2068, a bill, "to provide for public disclosure of lobbying activities to influence decisions in the Congress and the executive branch," and S. 2167, a bill "to provide for the recording and public disclosure of lobbying activities directed at the Congress and the executive branch."

This Commission supports the general concept expressed in these bills, i.e., that information about lobbying activities, as defined in S. 2068 and S. 2167, should be accessible to the public. However, inasmuch as they principally concern filing and record maintenance requirements affecting lobbyists, we will confine our comments to § 201 of S. 2167, which would require "any agency official who receives an oral or written communication which pertains to any Federal agency activity or policy issue [to] prepare a record of that communication as prescribed in legislation creating or regulations promulgated by the agency."

Since the Commission's establishment in 1970, upon enactment of the Postal Reorganization Act (39 U.S.C. §§ 101, et seq.), we have conducted our regulatory proceedings on hearing records available to the general public. Also, as we explain below, our activities are governed by stringent ex parte rules resulting in the

preparation and public distribution of the type of record contemplated by § 201. Hence, the sole objective of the proposed legislation, insofar as it is directed to the functions of an agency such as ours, is already being achieved. 1/

The Nature of the Commission's Work. This Commission, which is an independent establishment of the executive branch of the Government (39 U.S.C. § 3601), conducts formal proceedings to determine the reasonableness of postal rates and fees (39 U.S.C. § 3622) and mail classifications (39 U.S.C. § 3623). The Commission may also hold hearings on proposals by the Postal Service for changes "in the nature of postal services which will generally affect service on a * * * substantially nationwide basis" (39 U.S.C. § 3661); and it has jurisdiction to consider complaints that postal rates and services do not conform to the policies of the Act.

The Commission has thus undertaken the ratemaking and mail classification functions formerly performed by Congress. Pursuant to the Act, five Presidentially-appointed members of the Postal Rate Commission transmit recommended decisions on these matters to the Governors of the Postal Service [39 U.S.C. § 3624(c)], whose final decisions are subject to judicial review (39 U.S.C. § 3628). The Commission's recommended decisions are issued after full evidentiary hearings are held in accordance with the Administrative Procedure Act (5 U.S.C. §§ 556 and 557). Typically, more than 50 intervenors (many of whom are associations representing thousands of firms) participate in our proceedings and present comprehensive exhibits and testimony--both written and oral--during the development of voluminous formal records.

1/ Senator Muskie, in introducing S. 2167, stated that the purpose of § 201 is "to help broaden public understanding of the executive branch decisionmaking process," which he believes necessary because "[p]resent rules affecting ex parte communications are not broad enough to adequately inform the public about the operation of the executive and administrative processes." 121 Cong. Rec. S 13418 (daily ed. July 23, 1975). Because of the comprehensive ex parte rules under which this Commission operates, described infra, Senator Muskie's reasoning does not apply to the Postal Rate Commission.

Section 201 of S. 2167 and the Commission's Ex Parte Rules. One of the purposes of the Act was to remove the influence of lobbying activities from the postal ratemaking process. 1/ To help guarantee achievement of this purpose, and in order fully to insulate Commission decisions from possible outside pressures, stringent prohibitions against ex parte communications were included in our Standards of Conduct (39 C.F.R. §§ 3000.735-101, et seq., particularly 501 and 502) and in our Rules of Practice and Procedure (id. at § 3001.7) when the Commission was created.

The Commission's rules impose upon its officials and employees requirements that are considerably more extensive and strict than the provisions of § 201 and S. 2167. (We note that S. 2068 does not contain a similar provision.) Under the Commission's Standards of Conduct, no employee, regardless of his or her grade level, may participate in any ex parte communication, either oral or written, with any person regarding (1) a particular matter (substantive or procedural) at issue in contested proceedings before the Commission or (2) the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission [id. at 3000.735-501]. If an ex parte communication, either oral or written, should occur inadvertently notwithstanding the above prohibition, a full written report is required to be submitted within two days. All such reports are available to the public as part of the public records of the Commission. If the ex parte communication concerns a particular matter at issue in a proceeding before the Commission, a copy of the report is required to be sent to each party to the proceeding (id. at § 3000.735-502).

The Commission's Rules of Practice and Procedure contain similar structures against ex parte communications between parties to Commission proceedings and all Commission employees (39 C.F.R. § 3001.7). Even communications between our litigation staff and parties on purely procedural matters which are not at issue must

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1/ Congressman Udall alluded to these circumstances during the floor debate on the Act, stating: "Fixing postal rates under intense lobbying pressures, as done in the past, produces neither fair and adequate rates, nor does much to strengthen the role of Congress." (116 Cong. Rec. 27605.)

be reported monthly, and they are available for public inspection. It is the Commission's opinion that these rules ensure that our decisions will be based exclusively on formal hearing records, as required by the Act [39 U.S.C. § 3624(a)], and will also inform the public of the types of communications with which S. 2068 and S. 2167 are concerned.

Technical note. Section 102(1) of S. 2167 defines "executive communication" as "any communication by any person * * * with a Federal officer or employee to influence the executive policymaking process," with the exception of the "exempt communications" described in § 102(m). Included among those exempt communications [in § 102(m)(5)] is "any written statement submitted by any person in connection with [any] matter or measure [before an agency] and accepted for inclusion in the records of [the] Federal agency provided that each * * * statement is made a matter of public record by the * * * agency within a reasonable time after the * * * submission." Because this Commission's present ex parte rules require the inclusion of such executive communications in our public records, lobbyists who contact this agency's officials or employees in writing would appear to be relieved of the reporting requirement of § 105(i), which would otherwise apply. Furthermore, the same would presumably be true with respect to written executive communications to officials and employees of all other Federal agencies after regulations conforming to the requirements of § 201 are adopted. Requiring lobbyists to report all oral executive communications, but not those written communications which bear on matters before a Federal agency, would appear to be an anomalous result, particularly in light of the reporting requirements imposed on the agencies themselves by § 201, which makes no such distinction between oral and written communications.

Very truly yours,

Clyde S. DuPont

Clyde S. DuPont
Chairman



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LAW DEPARTMENT
Washington, DC 20260

November 4, 1975

GOVERNMENT OPERATIONS COMM.
RECEIVED
NOV 5 1975
WASHINGTON, D. C. 20515

Dear Mr. Chairman:

This responds to your request for the views of the Postal Service on S. 774, S. 815, S. 2068, S. 2167, and S. 2477, bills proposing to regulate lobbying activities with respect to Congress and the executive branch.

As we understand it, S. 2477 represents a consensus approach on the part of the sponsors of most of the earlier bills toward solving some of the questions of applicability and the meaning of terms raised by the earlier efforts. We agree that this bill is drafted more effectively in these respects. Accordingly, we assume that there is no need to discuss the technical problems presented by the earlier bills that the latest revisions seem drafted to correct.

The principal substantive difference of interest to the Postal Service among the bills is the proposal in S. 774 (§7) and S. 2167 (§201), for which there is no analog in the other bills, that the Federal officials who are contacted by lobbyists must themselves keep a public record of those contacts. If added to S. 2477, this provision (as perfected in the later version) would apply to the Postal Service, which is specifically included as an agency covered by the latest bill (§3(5)).

In our opinion, a provision requiring Federal officials to keep a parallel set of lobbying activity records, in addition to the records required to be filed by the lobbyists, would be unjustified. The cost of this responsibility, both in salary and other expenses and in lost productive agency time, would be imposed upon the public, rather than upon the private interests in whose behalf lobbying efforts are made. There is no reason at present to suppose that the measures required of the lobbyists themselves, which would be buttressed by broad regulatory authority in the General Accounting Office or the Federal Election Commission and by civil and criminal sanctions, would be insufficient to produce the full disclosure intended by the legislation. We are concerned, moreover,

with the burden which such a provision would impose on agency officials for the identification of the communications to which the reporting requirement would apply. While there is probably a core of communications to which application would be clear, the terms of the present proposals are so general (and perhaps unavoidably so) that almost any communications received by a responsible executive would arguably be subject to the requirement. The result, we think, would be an unproductive proliferation of reports which by their very volume might well obscure the small percentage of reports having possible significance. In addition, we believe it undesirable as a general principle to require the creation and maintenance of records which are not essential to the operation of the Postal Service, absent compelling justification.

Subject to the foregoing recommendations, the Postal Service takes no position with respect to the enactment of these proposals.

Sincerely,

W. Allen Sanders

W. Allen Sanders
Assistant General Counsel
Legislative Division

Honorable Abraham Ribicoff
Chairman, Committee on
Government Operations
United States Senate
Washington, D.C. 20510

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

MAY 1 1975

Honorable Abraham Ribicoff
Chairman
Committee on Government Operations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the views of the Consumer Product Safety Commission on S. 815, a bill

> "To provide for the public disclosure of lobbying activities with respect to Congress and the executive branch, and for other purposes."

The bill, cited as the Open Government Act of 1975, would repeal the Federal Regulation of Lobbying Act of 1946 and would establish broad statutory provisions requiring public disclosure of virtually every aspect of lobbying efforts before the Congress and executive agencies. The proposed act would be administered and enforced by the Federal Election Commission.

The comments of this Commission are limited to the application of the bill to this Commission and to other regulatory agencies.

In view of this Commission's present "openness" policy with respect to meetings with outside parties and information disclosure, the Commission does not believe that enactment of S. 815 would significantly affect the extent of public disclosure of lobbying activities before it. The Commission does, however, concur with the intent of the bill.

Virtually every contact between this Commission's personnel and outside interests, relating to matters before the Commission, is made a matter of public record. This

Commission's proposed and interim meetings policy (39 FR 37780) reflects the Commission's goal of increasing public confidence in the integrity of its decision making by conducting business, to the fullest extent possible, in an open manner which is free from any actual or apparent impropriety. That policy requires that virtually all meetings between Commission personnel and outside parties be open to the public, with the exception of those involving trade secrets or proprietary information. Meetings involving matters of substantial interest before the Commission, i.e., those pertaining in whole or in part to any issue that at a minimum is likely to be the subject of a regulatory or policy decision by the Commission, must be publicized in the Commission's "Public Calendar" in advance of the scheduled meeting date. Preparation of detailed summaries of such meetings, including summaries of telephone conversations involving matters of substantial interest, is required by the policy and all such summaries are available for copying or inspection by the public. Further, under the Commission's proposed and interim procedures for disclosure or production of information under the Freedom of Information Act (39 FR 30298), all incoming as well as outgoing correspondence is on file and available for copying or inspection. The Commission's stated policy with respect to information requests under that act is that disclosure is the rule and that withholding is the exception.

The Commission wishes to express its concern regarding the extent of recordkeeping and reporting as would be required for persons that would be subject to the bill's provisions. The scope and specificity of those requirements may discourage active participation by persons in the development and implementation of federal policies or rules potentially affecting them. While disclosure of certain information such as financial data may be in the public interest, the Commission believes that adoption of an "openness" policy by all regulatory agencies would accomplish the bill's intent. ~~Accordingly, the Commission would prefer statutory provisions providing for government wide implementation~~ of "openness" policies with respect to meetings with outside parties and information disclosure. Although such "openness" policies may entail some difficulties beyond additional agency paperwork, the Commission's experience shows that such burden becomes trivial when compared to the benefits of increased public confidence. The Commission would further recommend that enforcement of any such statute may more appropriately be vested with the General Accounting Office (which is presently familiar with the operations of federal agencies) rather than with the

Federal Election Commission. The Commission would support such legislative effort and, further, would welcome the opportunity to present its views at any relevant committee hearings.

Sincerely,

ORIGINAL SIGNED BY
RICHARD O. SIMPSON
Richard O. Simpson
Chairman

cc: Director, Office of
Management and Budget

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

AUG 28 1975

AUG 25 1975

Honorable Abraham Ribicoff
Chairman
Committee on Government Operations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the views of the Consumer Product Safety Commission on S. 2068, a bill

> "To provide for public disclosure of lobbying activities to influence decisions in the Congress and the executive branch"

and on S. 2167, a bill

> "To provide for the recording and public disclosure of lobbying activities directed at the Congress and the executive branch."

The bills, cited as the "Federal Lobbying Disclosure Act of 1975" and the "Lobbying Disclosure Act of 1975," respectively, are alternative approaches to establishing requirements for reporting the names, finances and purposes of persons who lobby Congress and the executive branch. The proposed acts would be administered and enforced by a new "Federal Lobbying Disclosure Commission," or by the General Accounting Office, respectively.

The Commission concurs with the intent of each bill to allow the public to obtain information as to the identity of lobbyists, the interests they represent, and their dealings with the Federal Government. However, it has reservations about the approach of both bills.

The Commission is concerned that in view of the broad definition of "lobbyist" in the two bills, the recordkeeping and reporting requirements may discourage citizen participation in federal rulemaking and policymaking. The Commission notes, particularly, that the cost in money and time of complying with these requirements will be proportionally greater for consumer groups and small business entrepreneurs than for large groups and businesses.

In addition, the Commission believes that persons who take an active interest in federal policymaking focus their activities on specific issues or governmental entities and would find an agency with an "openness" policy a more fruitful source of "lobbying" information than a single commission or office which maintains files on lobbyists. Accordingly, the Commission favors the government-wide implementation of "openness" policies with regard to meetings with outside parties and information disclosure similar to the Commission's meetings policy (39 FR 37780) and the Commission's procedures for implementing the Freedom of Information Act (39 FR 30298).

The Commission's meetings policy requires that virtually all meetings between Commission personnel (regardless of grade level) and outside parties be open to the public, with the exception of those involving trade secrets or proprietary information. Meetings involving matters of substantial interest before the Commission, i.e., those pertaining in whole or in part to any issue that is likely to be the subject of a regulatory or policy decision by the Commission, must be publicized in the Commission's "Public Calendar" in advance of the scheduled meeting date. Summaries of such meetings, including summaries of telephone conversations involving matters of substantial interest, are required to be prepared and made available for copying or inspecting by the public. Further, the Commission's procedures for the production of information under the Freedom of Information Act requires all incoming as well as outgoing correspondence to be on file and available for copying or inspecting. The Commission's stated policy with respect to information requests under that act is that disclosure is the rule and that withholding is the exception.

Although government-wide implementation of an "openness" policy as described above may entail some difficulties, the Commission believes that such burden becomes trivial when compared to the benefits of increased public confidence in the federal decision-making processes.

In view of the Commission's present "openness" policies, the Commission does not believe that enactment of either S. 2068 or S. 2167 would significantly affect the extent of public disclosure of lobbying activities before it. However, the Commission supports the legislative efforts to provide increased public disclosure of lobbying activities, and, further, would welcome the opportunity to present its views at any relevant committee hearings.

Sincerely,

ORIGINAL SIGNED BY
RICHARD O. SIMPSON

Richard O. Simpson
Chairman

cc: Director, Office of
Management and Budget



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

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Honorable Abe Ribicoff
Chairman, Committee on Government
Operations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the views of the Consumer Product Safety Commission on S. 2477, a bill:

> "To provide more effective public disclosure of certain lobbying activities to influence issues before the Congress and the Executive Branch, and for other purposes."

The bill, cited as the "Lobbying Act of 1975" would establish requirements for reporting the names, finances and purposes of persons and organizations who lobby Congress and the Executive Branch. The proposed act would be administered by the General Accounting Office.

In view of the Commission's present "openness" policy with respect to meetings with outside parties and information disclosure, the Commission does not believe that enactment of S. 2477 would significantly affect the extent of public disclosure of lobbying activities before it. The Commission, however, concurs with the intent of the bill to allow the public to obtain information concerning the identity of lobbyists, the interests they represent and the extent of their activities with the Congress and the Executive Branch.

The Commission supports the bill's application to so-called "indirect lobbying" in the form of efforts by lobbyists to mobilize public support for or opposition to an action by a Federal agency. In addition, the Commission views the exclusion from the bill's coverage of individual members of the public who communicate with the Congress or a federal agency concerning a matter of interest to them, as an improvement over prior legislative

proposals introduced in the 94th Congress. The Commission had previously taken the position that in view of the broad definition of "lobbyist" contained in such proposals as S. 774, S. 2068, and S. 2167, the recordkeeping and reporting requirements might tend to discourage active citizen participation in federal rulemaking and policymaking.

Nevertheless, the Commission has certain reservations with respect to the approach proposed in the bill. The Commission believes that persons who take an active interest in federal policymaking focus their activities on specific issues or government entities and would find an agency with an "openness" policy a more fruitful source of "lobbying" information than a single office which maintains files on lobbyists. Accordingly, the Commission favors the government-wide implementation of "openness" policies with regard to meetings with outside parties, information disclosure similar to the Commission's meetings policy (40 FR 51360), and the Commission's procedures for implementing the Freedom of Information Act (39 FR 30298).

The Commission's meetings policy requires that virtually all meetings between Commission personnel (regardless of grade level) and outside parties be open to the public, with the exception of those involving trade secrets or proprietary information. Meetings involving matters of substantial interest before the Commission, i.e., those pertaining in whole or in part to any issue that is likely to be the subject of a regulatory or policy decision by the Commission, must be publicized in the Commission's "Public Calendar" in advance of the scheduled meeting date. Summaries of such meetings, including summaries of telephone conversations involving matters of substantial interest, are required to be prepared and made available for copying or inspecting by the public. Further, the Commission's procedures for the production of information under the Freedom of Information Act requires all incoming as well as outgoing correspondence to be on file and available for copying or inspecting. The Commission's stated policy with respect to information requests under the act is that disclosure is the rule and that withholding is the exception.

Although government-wide implementation of an "openness" policy as described above may entail some difficulties, the Commission believes that such burden becomes trivial when compared to the benefits of increased public confidence in the federal decision-making processes.

Sincerely,

Richard O. Simpson
Chairman

cc: OMB

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