

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Reed to Donsia Strong re: Chris Edley (1 page)	5/24/94	P5, P6/b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 8428

FOLDER TITLE:

[Lobbying Reform]-General | 1]

rs52

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

LOBBY/LETTERS/MNTLHLTH. LTR

May 2, 1994

Ms. ~~XXXXXXXXXX~~, President
Mental Health Association in Texas
8401 Shoal Creek Boulevard
Austin, Texas 78757

Dear ~~XXXXXXXXXX~~:

Thank you for your letter of April 5 concerning the upcoming conference between the Senate and House of Representatives on S. 349, the Lobbying Disclosure Act. I appreciate the opportunity to discuss your concerns.

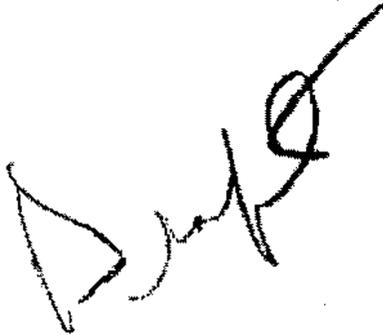
You indicate your support for the reporting threshold in the Senate version of the bill of \$5,000 per organization for each semi-annual reporting period. As you know, the House version has a threshold of \$2,500 for each semi-annual period, which the Subcommittee I chair raised from the \$1,000 level in the bill, as introduced, in response to concerns expressed by the non-profit community. This is an issue that must be addressed by the conferees.

Most small, local non-profit organizations would not have to register under the \$2,500 threshold approved by the House. According to Internal Revenue Service data, almost two-thirds of all non-profits that report lobbying expenses to the IRS would not meet the \$2,500 semi-annual threshold (\$5,000 annually), and the vast majority (more than 99 percent) of non-profits do not report any lobbying expenditures at all. My subcommittee amended the bill to allow a non-profit organization to use the IRS's definition of lobbying expenditures to determine if it has reached the semi-annual threshold, a provision that is now in both the House and Senate bills. Moreover, a non-profit organization that spends more than \$2,500 for lobbying expenditures (under the IRS definition) in a six-month period still would not be required to register unless it has an employee who spends 10 percent or more of his or her time lobbying the Federal Government.

You also suggest that non-profits be allowed to use the IRS rules for disclosing their lobbying contacts with legislative branch officials, while following the Lobbying Disclosure Act's requirements for disclosing contacts with executive branch officials. I have several concerns about this proposal.

First, the proposal may be outside the scope of the

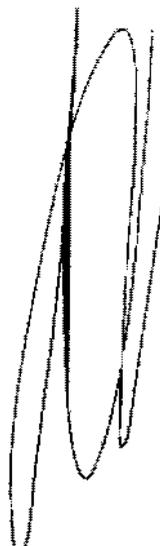
Ms. ~~Patricia~~ ~~Ward~~, President
Mental Health Association in Texas
May 2, 1994
Page 2



conference on the Lobbying Disclosure Act because neither the Senate nor the House bill includes special rules for disclosure of lobbying contacts by non-profits. Second, I suspect the different disclosure rules for non-profits' legislative branch lobbying and executive branch lobbying would be more complicated for non-profits to comply with than following the Lobbying Disclosure Act's uniform rules for all lobbying.



Finally, it would be unfair and misleading to allow non-profit organizations to avoid disclosing certain lobbying activities while other organizations lobbying the same officials on the same issues must disclose these activities. For example, following the IRS rules for contacts with legislative branch officials would allow a non-profit organization to avoid disclosing lobbying contacts concerning tax legislation (including contacts concerning the organization's own tax-exempt status) or non-legislative matters (such as asking a Member of Congress to inquire about a matter before the executive branch). Such a reporting system would give the public a distorted view of the efforts to influence the decisions and for-profit organizations would argue justifiably that the lobbying activities of the business community had been singled out for scrutiny.



You should know that the Subcommittee I chair addressed most of the non-profits' stated concerns about the Lobbying Disclosure Act's burdens on non-profit organizations that do a small amount of lobbying. As noted above, the Subcommittee raised the dollar threshold and allowed non-profit organizations to use the IRS definition of lobbying for determining whether they have reached this threshold. The bill also allows non-profits to use the IRS definition for estimating lobbying expenditures within dollar categories. Thus, non-profit organizations will not need to create separate financial accounting systems to comply with the Act. In addition, the Subcommittee moved administration of the program from the Justice Department to an independent agency and specified that someone is not considered a lobbyist unless he or she spends at least 10 percent of his or her time lobbying the Federal Government. We established a three-year statute of limitations for punishing violations under the Act and a phase-in period so that lobbyists are not penalized for most violations during the first semiannual reporting period.

I very much appreciate your commitment to the public disclosure of lobbying efforts, and I will keep your views in mind and discuss them with my fellow conferees as the conference progresses.

Sincerely,

ESS YOUR CHOICE:

BRIEF REFERENCES

5 Lobbying

ARCH TERM(S): LOBBYING [HEADINGS SELECTED]

REFERENCES FOUND: 19

Page 1 of 1

Author	Title	Date	Call no
Green, Mark J.	Corporate lobbies: political pro		JK1118 .07
Herring, Edward Pendl	Group representation before Cong		JK1118 .H4
Key, Valdimer Orlando	Politics, parties, and pressure		JK2265 .K3
Lane, Edgar.	Lobbying and the law/		JK1118 .L2
Latham, Earl Ganson.	Group basis of politics: a study		JK1118 .L3
Milbrath, Lester W.	Washington lobbyists/		JK1118 .M5
Schriftgiesser, Karl.	Lobbyists: the art and business		JK1118 .S3
Schattschneider, Elmer	Politics, pressures and the tari		HF1756 .S3
Scott, Andrew MacKay.	Congress and lobbies: image and		JK1118 .S4

See Line Number to Select Your Choice:

BRIEF REFERENCES

ARCH TERM(S): LOBBYING [HEADINGS SELECTED]

REFERENCES FOUND: 5

Page 1 of 1

Author	Title	Date	Call no
	The Washington lobby.	1987	JK1118 .06
DJK50 .H68 1991 Howard, A. E. Dick	Democracy's dawn: a directory of Ameri		
Haider, Donald H.	When governments come to Washing	1974	JK325 .H3
Stathis, Jennie S.	Lobbying and political activitie	1987	GAO -Low
United States.	Tax administration: information	1987	GAO Low

See Line Number to Select Your Choice:

FULL RECORD

ARCH TERM(S): LOBBYING [HEADINGS SELECTED]

REFERENCES FOUND: 1

Page 1 of 1

JL NO.: H11 .A7 no.0368
 FILE: Lobbying : a constitutionally protected right
 AUTHOR: Eastman, Hope.
 AUTHORITY: American Enterprise Institute for Public Policy Research.
 SCRIPT: Washington, DC : American Enterprise Institute for Public Policy
 Research, c1977. 35 p. ; 23 cm.
 SERIES 1: AEI studies ; 168.
 SUBJECT 1: Lobbying--Law and legislation--United States.
 NOTES 1: Includes bibliographical references.
 AGENCY: NEOS

DATE AFT 1-15-93 AND LOBBYING DISCLOSURE ACT

Note: Two-digit year numbers are assumed to be years between 1900 and 1999.

Your search request has found no ITEMS.

To edit the above request, use the arrow keys. Be sure to move the cursor to the end of the request before you transmit it.

To enter a new search request, type it and press the TRANSMIT key.

What you transmit will be Search Level 1. - "Data AFT 1-15-93 and Lobbying and Legislation"

For further explanation, press the H key (for HELP) and then the TRANSMIT key. Press Alt-H for Help or Alt-Q to Quit.

LEVEL 1 - 84 ITEMS

on a book on the first year of the Clinton Administration.

6. The New York Times, March 14, 1993, Sunday, Late Edition - Final, Section 13LI; Page 1; Column 1; Long Island Weekly Desk, 2523 words, Smoking Bans Casting a Wider Net, By RAHEL MUSLEAH

7. The New York Times, March 12, 1993, Friday, Late Edition - Final, Section A; Page 14; Column 3; National Desk, 829 words, Military Industry Lobbies to Preserve Status Quo, By EDMUND L. ANDREWS, Special to The New York Times, WASHINGTON, March 11

8. The Washington Times, March 12, 1993, Friday, Final Edition, Part A; Pg. A1 1152 words, Old debate, new urgency; Police: Doctor's killer acted alone; Both sides use Florida incident as lobbying tool, Joyce Price; THE WASHINGTON TIMES

9. The New York Times, March 11, 1993, Thursday, Late Edition - Final, Section A; Page 3; Column 1; Foreign Desk, 1400 words, Tough Abortion Law Provokes Dismay in Poland, By JOHN DARNTON, Special to The New York Times, WARSAW, March 10

10. The New York Times, March 10, 1993, Wednesday, Late Edition - Final, Section A; Page 18; Column 1; Editorial Desk, 473 words, Emily's Loophole Press Alt-H for Help or Alt-Q to Quit.

LEVEL 1 - 84 ITEMS

11. The Washington Times, March 10, 1993, Wednesday, Final Edition, Part A; Pg. A1, 716 words, Health care panel shuts door tighter; Public's out, special interests are in; Paul Bedard; THE WASHINGTON TIMES

12. The New York Times, March 9, 1993, Tuesday, Late Edition - Final, Section

A; Page 13; Column 1; National Desk, 1296 words, Supreme Court Roundup; Justices Say States May Make Union-Only Pacts in Public-Works Projects, By LINDA GREENHOUSE, Special to The New York Times, WASHINGTON, March 8

13. The New York Times, March 9, 1993, Tuesday, Late Edition - Final, Section C; Page 13; Column 1; Cultural Desk, 896 words, The Talk of Hollywood; Warning: This Movie Is Harmful to Directors, By BERNARD WEINRAUB, Special to The New York Times, HOLLYWOOD, March 8

14. Copyright (c) 1993 The New York Times Company: Abstracts WALL STREET JOURNAL March 9, 1993, Tuesday, Section A; Page 20, Column 1, 45 words, BANKERS FIGHT STUDENT LOAN OVERHAUL, BUT PROPOSAL GAINS SUPPORT IN COLLEGES, BY CATHY TROST

15. The Washington Times, March 9, 1993, Tuesday, Final Edition, Part A; NATION; Pg. A6, 626 words, Louisiana won't get day in court on abortion law, Nancy E. Roman; THE WASHINGTON TIMES

Press Alt-H for Help or Alt-Q to Quit.

LEVEL 1 - 84 ITEMS

21. The New York Times, March 4, 1993, Thursday, Late Edition - Final, Section A; Page 24; Column 1; Editorial Desk, 404 words, The Lobbyists' Gravy Train

22. The New York Times, March 4, 1993, Thursday, Late Edition - Final, Section D; Page 8; Column 1; Financial Desk, 605 words, Market Place; In a long shot, an indictment actually benefits a gaming stock., By Kurt Eichenwald

23. The New York Times, March 3, 1993, Wednesday, Late Edition - Final, Section A; Page 24; Column 4; Editorial Desk, 587 words, We Have a Real Chance for Lobbying Reform

24. (Same - smaller article) The New York Times, March 3, 1993, Wednesday, Late Edition - Final, Section A; Page 24; Column 5; Editorial Desk, 201 words, We Have a Real Chance for Lobbying Reform; Just the Facts

25. The New York Times, March 3, 1993, Wednesday, Late Edition - Final, Section A; Page 24; Column 6; Editorial Desk, 165 words, We Have a Real Chance for Lobbying Reform; A Special Interest State

26. The Washington Times, March 3, 1993, Wednesday, Final Edition, Part B; METROPOLITAN; Pg. B1, 579 words, Warner proposes killing space station project, Jim Clardy; THE WASHINGTON TIMES

Press Alt-H for Help or Alt-Q to Quit.

LEVEL 1 - 84 ITEMS

27. The New York Times, February 27, 1993, Saturday, Late Edition - Final, Section 1; Page 18; Column 1; Editorial Desk, 511 words, Mr. Wilder's Bulletproof Vest

28. The New York Times, February 25, 1993, Thursday, Late Edition - Final, Section A; Page 18; Column 1; Editorial Desk, 401 words, Indecent Disclosure

29. Copyright (c) 1993 The New York Times Company: Abstracts WALL STREET JOURNAL February 24, 1993, Wednesday, Section B; Page 2, Column 3, 31 words, BY JEFFREY A TANNENBAUM

30. The New York Times, February 23, 1993, Tuesday, Late Edition - Final, Section A; Page 1; Column 5; National Desk, 988 words, Congress Is Pressed to

Join in Belt-Tightening, By CLIFFORD KRAUSS, Special to The New York Times, WASHINGTON, Feb. 22

31. The New York Times, February 23, 1993, Tuesday, Late Edition - Final, Section A; Page 18; Column 1; National Desk, 588 words, Treasury Report On Clinton Plan Labels It as Fair, By STEVEN GREENHOUSE, Special to The New York Times, WASHINGTON, Feb. 22

Press Alt-H for Help or Alt-Q to Quit.

LEVEL 1 - 84 ITEMS

37. The New York Times, February 19, 1993, Friday, Late Edition - Final, Section A; Page 26; Column 1; Editorial Desk, 621 words, The Vision Beyond the Plan

38. The Washington Times, February 19, 1993, Friday, Final Edition, Part A; NATION; PRESIDENT CLINTON'S ECONOMIC PLAN; Pg. A7, 584 words, Lobbyists will lobby hard against cut in deductions, David R. Sands; THE WASHINGTON TIMES

39. The New York Times, February 17, 1993, Wednesday, Late Edition - Final, Section A; Page 15; Column 5; National Desk, 717 words, Clinton Makes Lobbyists a Target In Opening Battle Over Tax Rise, By MICHAEL WINES, Special to The New York Times, WASHINGTON, Feb. 16

40. The New York Times, February 16, 1993, Tuesday, Late Edition - Final, Section A; Page 1; Column 6; National Desk, 1301 words, CLINTON TELLS MIDDLE CLASS IT NOW FACES A TAX INCREASE BECAUSE DEFICIT HAS GROWN, By RICHARD L. BERKE, Special to The New York Times, WASHINGTON, Feb. 15

41. The New York Times, February 16, 1993, Tuesday, Late Edition - Final, Section A; Page 17; Column 1; Editorial Desk, 1010 words, All Interests Are Special, By Thomas Hale Boggs Jr.; Thomas Hale Boggs Jr. is a lawyer and lobbyist., WASHINGTON

Press Alt-H for Help or Alt-Q to Quit.

LEVEL 1 - 84 ITEMS

57. The Washington Times, February 4, 1993, Thursday, Final Edition, Part B; METROPOLITAN; VIRGINIA ASSEMBLY '93; Pg. B1, 761 words, Gun-control debate set to move to House floor ; Panel may OK measure today, Laurie Kellman; THE WASHINGTON TIMES, RICHMOND

58. The New York Times, February 3, 1993, Wednesday, Late Edition - Final, Section A; Page 23; Column 1; Editorial Desk, 612 words, Who Will Regulate the Regulators?, By William D. Ruckelshaus; William D. Ruckelshaus, Administrator of the Environmental Protection Agency in the Nixon and Reagan Administrations, is chief executive officer of Browning Ferris Industries, a waste management company., HOUSTON

59. Copyright (c) 1993 The New York Times Company: Abstracts WALL STREET JOURNAL; February 3, 1993, Wednesday, Section A; Page 16, Column 1, 50 words, CLINTON'S PLAN FOR CAMPAIGN, LOBBYING REFORM ENCOUNTERS RESISTANCE FROM HOUSE DEMOCRATS, BY JEFFREY H BIRNBAUM

60. The Washington Times, February 3, 1993, Wednesday, Final Edition, Part A; NATION; Pg. A5, 598 words, Gay-ban barrage lets up on congressional offices, Carleton R. Bryant; THE WASHINGTON TIMES

Press Alt-H for Help or Alt-Q to Quit.

LEVEL 1 - 84 ITEMS

- * *
72. The Washington Times, January 29, 1993, Friday, Final Edition, Part E; LIFE; ABOUT TOWN; Pg. E2, 686 words, Lobbying lobbyists is fine art, my dear, Judith Olney; THE WASHINGTON TIMES
73. The New York Times, January 28, 1993, Thursday, Late Edition - Final, Section B; Page 1; Column 5; Metropolitan Desk, 1181 words, Assembly Bill On Gay Rights Likely to Pass, By KEVIN SACK, Special to The New York Times, ALBANY, Jan. 27
74. The New York Times, January 24, 1993, Sunday, Late Edition - Final, Section 1; Page 18; Column 1; National Desk, 874 words, Emporia Journal; Perot Calls, But Bastion Of '92 Race Holds Back, By DIRK JOHNSON, Special to The New York Times, EMPORIA, Kan., Jan. 22
75. The New York Times, January 24, 1993, Sunday, Late Edition - Final, Section 4; Page 16; Column 1; Editorial Desk, 652 words, No Delays for Public Trust
76. The New York Times, January 24, 1993, Sunday, Late Edition - Final, Section 13NJ; Page 1; Column 1; New Jersey Weekly Desk, 1527 words, New Effort To Teach Homeless Children, By PRISCILLA VAN TASSEL

Press Alt-H for Help or Alt-Q to Quit.

LEVEL 1 - 53 STORIES

26. The Washington Post, February 12, 1993, Friday, Final Edition, METRO; PAGE D1, 858 words, Some Women Hedge Vote For Arnick; Bench Nominee Expected To Defend Himself Today, Richard Tapscott, Washington Post Staff Writer, ANNAPOLIS, Feb. 11, 1993, MARYLAND NEWS
27. The Washington Post, February 11, 1993, Thursday, Final Edition, METRO; PAGE C1, 955 words, Md.'s Women Lawmakers Back Arnick, Richard Tapscott, Charles Babington, Washington Post Staff Writers, ANNAPOLIS, Feb. 10, 1993, MARYLAND NEWS
28. The Washington Post, February 8, 1993, Monday, Final Edition, FIRST SECTION; PAGE A1, 1023 words, Wilder Makes Deal On Handgun Bill; One-Purchase-a-Month Limit Eased, Donald P. Baker, Peter Baker, Washington Post Staff Writers, RICHMOND, Feb. 7, VIRGINIA NEWS
- VIRGINIA * *
29. The Washington Post, February 7, 1993, Sunday, Final Edition, METRO; PAGE B3, 778 words, Va. House Backs Limits on Campaign Donations; Delegates Vote Tougher Regulation of Lobbyists, Small-Scale Test of Wilder's Welfare Overhaul, Peter Baker, Pierre Thomas, Washington Post Staff Writers, RICHMOND, Feb. 6, VIRGINIA NEWS

Press Alt-H for Help or Alt-Q to Quit.

LOBBYING**Senate Backers Don't Plan Lobbying Bill Compromise**

Despite strong opposition from Common Cause, backers of a lobbying reform bill sponsored by Sen. Carl Levin, D-Mich., foresee the measure moving to the Senate floor after the Easter recess -- and do not expect to compromise to satisfy the influential public interest group anytime soon, sources said today. In recent weeks, Levin aides have expressed concern that Common Cause President Fred Wertheimer's opposition could hurt the bill's chances for passage. Wertheimer said after a Governmental Affairs Committee markup of the bill late last month that it should include a provision requiring the disclosure of free trips, meals and entertainment provided by lobbyists to members of Congress and their staffs -- and declared that without such a provision, it should not be passed.

However, key sources said no compromise with Wertheimer is in the works and that the bill will move to the floor as is. "I have not seen any indication of discussion" between Levin and Wertheimer, a well-placed source said. "On at least one occasion, they passed each other in the hall and didn't say a word." A Levin spokesman contended Common Cause "is very proficient in sinking this kind of reform effort." The spokesman said backers already have compromised on the measure throughout its drafting -- and that no further changes have been made since the markup. Asked if a compromise is in the works, the spokesman said: "We have compromised. This bill is ready."

Levin's bill would consolidate and expand disclosure requirements with regard to lobbying of the executive branch. In addition, those who lobby Congress on non-legislative matters and who contact congressional staff would be required to disclose this activity for the first time. Meanwhile, the House Judiciary Administrative Law/Governmental Relations Subcommittee is scheduled to hold a hearing on a similar bill later this month.

The Congress Daily --- Monday --- March 8, 1993

Lobby Disclosure
House of Representatives
Washington, D.C. 20515

MEMORANDUM

Independent Sector

850 org members

non profit - tax exempt

Some are already disclosing

lobbying expenses

can opt in to ~~the~~ IRS
disclosure

but can opt out

IRS form is sort of public disclosure
FOIA request
Non profit request

Only disclose \$
not former officials info
can reference w/ campaign
who's lobbying

House of Representatives

Washington, D.C. 20515

MEMORANDUM

unique burdens -
no separate acctg req

same dollar amt can be disclosed
so they don't need two
types of acctg

Def of lobbyist

2 or 1 pg form

Treatment of Churches

- They are exempt (Levin)
- IRS coverage (arg)
- no express exempt for churches
in current law or

16 March 93

AL Berman

OMB

Richard Loeb

- ① Use APA v. informal proceeding set up in the bill
- ② Section 11 - provision for investigative authority
*requests for documents
- ③ Treatment between legislative and executive branch
- ④ Incidental and not significant
bright line
- ⑤ Call outside the chain - are these lobbying contacts? Yes → coz your guy does not understand
- ⑥ Informal solving of matters w/ executive branch
- ⑦ substitute officials if someone calls the
- ⑧ agency in the law
white house

3/5/93

Lobby Disclosure

Nan Aaron - non profits were not original target of this bill

Senate Bill - fast track
House Bill hearing -

Administration apparently has Reservations with some of the provisions.

Levin wants the bill very badly.
Suggested hearing w/ DOT to determine DOT's role.

Thinks if Levin's staff were provided guidance from White House.

Believes the bill was an afterthought.

① Establishes complex set of regulations
in addition to § 1149 regulations
non profits can meet IRS reqs
want a set of definition familiar
to non profits

deduction legislation could use § 4911

Self preservation lobbying is not
considered lobbying.

Burden - double set of regulations
- will discourage the very set
of activity that the Clinton
Administration seeks to encourage

Reporting requirements are not onerous
But full documentation by
non will be particularly onerous

What is the purpose?

Corruption of political process
is by the corporate interest

Very dangerous to include non profits
in this bill—
Nancy Waterman
non-profits tax status is at issue

People for the American way
State & Locals don't have to register ^{always} ^{against} ^{public} ^{interest}
non of the lesser protected speech
is affected by this bill

Independent Sector—
wants to disclose under
the IRS regulations

definition of lobbying
non partisan
self preservation—

Mike Trustis

Agency—DoJ will receive same
info as IRS—

Agency whose sole purpose
is to enforce lobbying

DOJ will only review one section of
the 990
differential in def of lobbying

There is ambiguity -
regarding whether executive
branch lobbying is covered

Sierra - Executive Branch lobbying
scheme really worries
them -
covers SES and others
some Park Service superintendents

If the bill is opened up to administrative
lobbying, creates a huge problem
tracking will become a nightmare

Citizens groups being investigated by
FBI -

DOJ should not have latitude to promulgate
OIG → is where this should be - ^{rule}

IRS seems place —

OGE should have it —

especially if bill includes
gifts & pulls in federal
employees —

It makes sense to
put it in IRS so it can be checked
OGE

Corporate tax filings not public
nonprofit tax filings are public

Money

Separate places for gifts, travel
want member by member

who is lobbying?
want % of time

Don't want state & locals
exempted

Threshold of dollars spent is
very low -

Levin may be looking for
a higher number -

Significant -

\$10,000 growing to mos

Nancy
Carr Gilbert

Public Citizen

H.R. 823

Hearing early March 4, 1993

Discussion = ACLU position

1. non-profit sector issues

don't want IRS to expand their definition

501(c)(4) - use all money toward Lobbying ^{Common Cause} ^{Public Citizen}

501(c)(3) - use up to 20% toward lobbying

IRS lobbying definition is very narrow

suggested language → provision stating the def is not
intending to expand definition

2. incidental; ^{are} not a significant part of, } maybe 2 pt test
would like to strike the phrase

How does a public interest group or coalition
prove that they are not controlling etc.?

Not to disclose members -

financial interest is key.

H. R. 3597- to reform The Foreign Agents
Registration Act

Amend FARA to

- * expand FARA's coverage
- * narrow foreign principals exemption
- * notification to Justice for claiming
"attorneys' exemption"
- * establish civil penalties and
administrative enforcement provisions

Levin Bill

unify lobbying disclosure laws
cover lobbying of Congress + Exec.
on behalf of domestic and foreign

Replaces -

Old Regulation of Lobbying Act;
the disclosure requirements of The Byrd Amendment
(31 U.S.C. 1352)

FARA - lobbying for private persons and companies
HUD Reform Act's disclosure provisions

FARA - H.R. 3966 Ban on former trade officials
H.R. 3597

Issues: tax deductions for lobbying
expenses

: expansion of registration and
disclosure by eliminating loopholes

- Lawyers who lobby
on behalf of foreign clients are
exempt from registering.

Levin combines and updates 1946 Lobby
regulation Act; some FARA and
exec branch amendment on exec branch
lobbying

abolish lawyers exemption

* must register after contact w/ Congress
and staff

Common Cause -

McGehee - generally supportive
of his bill -

would like to see some things
added - gift disclosure.

probably to compare what
Congress reports & what lobbyist reports

Donna Edwards

Craig

Laura

Bill Pascregg 308

Michael

Public Citizen

546-4996

Meredith McGehee Common Cause

833-1200

Ethics in Gov't Act

GAO report > conflict of interest - disturbing record by executive branch

Travel reimbursement -

travel on outside

sources - partial by

Acceptance of Honoraria - by middle & low level workers

support compromise - accept honoraria for middle & low level

Independent Counsel

Testified - eager to see it reintroduced

Supporting Levin's bill -

Coverage of members of Congress - discretion

not mandatory coverage

Accountability for indep counsel -

How to support from reauthorization

Trans. from -> etc orders

Roy Dye -> staff counsel DSC -> 813-0083

Public Citizen
Donna Edwards

revolving door question for former
members - 9 senior staff people

89 Act contained 2yr ban

for Sr Staff

But does not apply to Members

Cooling off period
branch also

should apply to executive
branch also

89 Act - issues still out there

on executive branch travel

private payment for travel

Sen. Moshacker particularly troublesome.

Gov Ops - Post Office deal w/ in past

Condition of Appt to Advisory Comm -
full financial disclosure

Independent Council
Lawyers hired by for-profit and non-profit
will have to register.

Stevens urged to take on

copies will be filed w/ Secy of State's House
+ DOJ

step by step process - any move to jump
bill h/c does not go far enough is foolish

Increase in Registration

GAO studying sample of Washington Representative.

Common Cause re:

L. Ethics
Lester Harris 675-2309

Bob Beck

2320

Clinton transition rules

Legal Services

Jony Califa

Common Cause

202-833-1200

Public Citizen of America

- 833-3000 Edwards

516 4496

Sign agreement

Sign form on foreign
rep. income

1st amendment P.C.

Lobbying for gov

John
1473
1475
1475
James Reed

ACLU

Sub. narrowly
tailored - to accomplish
goal

no evidence

is
ineffective

ABH - Butler

inadequacy - gifts compared to Arkansas

- gifts to pet charities

honorary donations

- receptions

Pryor - not sure this is level playing field

- executive agency using public citizens

to lobby - i.e. had Stuart lobbyist

- ^{Is} Common Cause covered?

substantial contribution

501(c)(3) are covered

460

registered

Any disclosure

lists in

AK

Constitutional problem w/ reaching the membership of non-profits organization

out of the gift giving universe

If there is an abuse of federal funds, introduce a bill to stop abuse of federal funds.

NY Times would open loophole opening loophole gift givers universe

Mandatory cross ref. of firm,
indiv lobbyist, clients

Lobbyist have the onus to
file not the client

insert pg 11 ^{line} ~~para~~ 29

the name, ~~business~~ address, business
telephone number and principal place

The name of each lobbyist as
~~defined~~ employed by the registrant

each lobbyist listed pg 13 § 6 para 1

Income Estimates

Directly related to the 2002

53 814

Threshold 20% of budget
on lobbying expenses

GM; Exxon;

Public Citizen

~~P.I.A.~~
~~Lobbying firm~~

threshold raised → \$5000
deletion of language →
together allow major
Lobbyists to get off.

Wildlife vs. patent lawyer
are you paying

Maybe lobbying on other side

Public Citizen -

Significantly participates is not defined
David Maiman - yes it is...

The word-phrase significantly shows up
2 places

Issue - different definitions for lobbying
for DOJ & IRS.

What is the significance of the
definition?

They (non profits) want a more narrow
definition for who they lobby
than for what they spend on
lobbying

What is it that they are afraid
of?

Pam Gilbert - Wash Post - arguing for

CRIM statute for a participating 4th
what's diff about a non-profit participating



UNITED STATES *v.* HARRISS *ET AL.*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA.

No. 32. Argued October 19, 1953.—Decided June 7, 1954.

1. As here construed, §§ 305, 307 and 308 of the Federal Regulation of Lobbying Act are not too vague and indefinite to meet the requirements of due process. Pp. 617-624.

(a) If the general class of offenses to which a statute is directed is plainly within its terms, the statute will not be struck down as vague, even though marginal cases could be put where doubts might arise. P. 618.

(b) If this general class of offenses can be made constitutionally definite by a reasonable construction of the statute, the Court is under a duty to give the statute that construction. P. 618.

(c) Section 307 limits the coverage of the Act to those "persons" (except specified political committees) who solicit, collect, or receive contributions of money or other thing of value, and then only if one of the main purposes of either the persons or the contributions is to aid in the accomplishment of the aims set forth in § 307 (a) and (b). Pp. 618-620, 621-623.

(d) The purposes set forth in § 307 (a) and (b) are here construed to refer only to "lobbying in its commonly accepted sense"—to direct communication with members of Congress on pending or proposed legislation. Pp. 620-621.

(e) The "principal purpose" requirement was adopted merely to exclude from the scope of § 307 those contributions and persons having only an "incidental" purpose of influencing legislation. It does not exclude a contribution which in substantial part is to be used to influence legislation through direct communication with Congress or a person whose activities in substantial part are directed to influencing legislation through direct communication with Congress. Pp. 621-623.

(f) There are three prerequisites to coverage under §§ 307, 305 and 308: (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

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.

OGE Draft

Lobbying
Reform

Letter to the conferees on H.R. 823, Lobbying Disclosure Act or

It is our understanding that the Senate conferees will use the gifts provisions of S. 1935 as guidance in its conference with the House on the Lobbying Disclosure Act, H.R. 823. While the gifts limitations in the S. 1935 do not apply to the executive branch, we note that a change found in Section 4 to the public financial disclosure law would apply to all three branches. This occurs because each branch no longer has a separate title in the Ethics in Government Act for public financial disclosure. All are governed by title I.

We believe that adding such an additional reporting requirement to an already complicated system is not an effective use of government resources, would not succeed in eliciting information that is related to the gifts rules of the executive branch (which by far has the most public disclosure filers), and is written in a manner that places an untenable burden on all filers regardless of branch. We therefore request that such an amendment to the public financial disclosure provisions of the Ethics in Government Act applicable to the executive branch not be included in the Lobbying Disclosure Act or any other bill.

Section 4 amends section 102(a)(2)(A) of the Ethics in Government Act so that in setting forth the disclosure requirements for gifts it would now read--

(2)(A) The identity and source, a brief description, and the value of -

(i) all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title, 5, United States Code, or \$250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of \$100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph, and

(ii) all gifts, other than food, lodging or entertainment received as personal hospitality of an individual, having a value of \$20 or more that are--

(I) provided by a person required to register under the Federal Regulation of Lobbying Act, the Foreign Agents Registration Act, or any successor Act, and

(II) would be prohibited by section 7353 of title 5, United States Code, but for a personal friendship exception contained in implementing rules and regulations issued pursuant to in (sic) subsection (b)(1) of such section."

The financial disclosure law, as we have noted before, is a very technical, and difficult one to make clear to filers. We make every effort to do so because the result of not filing a complete financial disclosure form can do substantial harm--to one's reputation and/or pocketbook. This particular provision is drafted in a manner to make the disclosure of gifts exponentially more difficult. For instance, "gift" is a term that is defined in title I of the Ethics in Government Act section 109(5) and that definition presently applies to items that must be publicly disclosed. The term "gift" is defined differently in S. 1935 and thus on the same financial disclosure report an individual will have to understand that a gift for public financial disclosure is not always the same as a gift under the Lobbying Disclosure Act. Further, this provision requires a filer to report gifts of a certain value from a person who is "required" to register under certain acts, not one who has registered. This makes the filer responsible for determining if a person or organization should have registered, not whether they did register.

The gifts rules for the executive branch do not focus on those who are "lobbying" the agency. Individuals or organizations carry out a wide variety of activities that involve executive branch action where they are not "lobbying" the agency. Our rules govern gifts from those organizations and individuals as well. Therefore, this disclosure rule sends the wrong signal in the executive branch and has little relationship to an executive branch interest. In addition, filers in the executive branch would have to make the distinction between those gifts prohibited by 5 U.S.C. § 7353 and those that are prohibited pursuant to executive order since the executive branch standards of conduct governing gifts are broader than the statute and do not make that distinction. Thus, a disclosure rule that is based upon legislative branch rules will become expensive and unwieldy for the executive branch.

Finally, on a practical note, we estimate that the executive branch uses over 40,000 copies a year of the public financial disclosure form. This form must be approved by OMB and GSA, and it is printed by GPO and stocked and sold to the agencies for their use by GSA. It is not a simple, quick or inexpensive process for the executive branch to change the form in order to meet new disclosure requirements. For example, the last change to the financial disclosure law was also to the gifts provision. It has taken the executive branch over 12 months to get the necessary clearances to change the form to conform to the law. Fortunately, since the last amendment only changed the threshold amounts of the

gifts that must be disclosed and moved those thresholds up, we made a decision to continue to use the old forms and have agencies attach some notice to filers of the change of threshold amounts. We were able to do that because individuals failing to receive or heed that notification would only be over disclosing rather than violating some statutory requirement. And, in order not to waste Government resources, this new form will not be available for distribution until the stocks of the old form are depleted.

If this provision were to become law, we could not guarantee that this Office could ensure that a correct form was available in time for use after the effective date of these proposed changes, nor do we believe that the information that would be required to be disclosed and the confusion this change would make in ethics enforcement would justify the expense.

If you believe that some additional disclosure requirement continues to be necessary for the legislative branch alone, we believe that result would occur if section 102(a)(2)(A)(ii) began in the following manner:

"(ii) for individuals who file pursuant to subsection (f)(9) and (10), all gifts. . . ."

We believe, however, that for the sake of those legislative branch individuals who would be required to file under this provision, the requirement should be limited to gifts from those who have registered under the Lobbying Disclosure Act rather than those who are required to file. In that way the recipient can at least check with the office administering the lobbying law to determine if the donor has filed or not rather than making an independent judgment about whether the donor was required to file.

If we can be of any assistance or provide any further information, please feel free to contact my Office.

Sincerely,

Stephen D. Potts
Director

Congress of the United States
Washington, DC 20515

*Lobby
Reform*

March 4, 1994

Honorable Thomas Foley
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Last Fall you charged us with the responsibility of examining the pending lobby reform legislation (the "Bryant bill") with a goal of developing a consensus on how best to pass responsible legislation. We are committed to that goal and want to do everything we can to cooperate to achieve that objective. After an exhaustive review beginning last Fall, we believe the bill needs to be strengthened in several respects.

We are writing to request that this legislation be considered under the regular procedure of the House and that this process commence immediately. As you know, the legislation has already been reported from the House Judiciary Subcommittee on Administrative Law. We believe the complexity of the current system and the pending legislation requires a full set of hearings and consideration by the entire Judiciary Committee and the House Administration Committee, which has jurisdiction over the gift rule requirements.

Some people may interpret this as a delaying tactic, but we assure you that is not our intent. Rather, we believe a bill will pass and we want to insure that it accomplishes what it intends and that it does not result in unintended consequences. The committees with jurisdiction have Members with the detailed, substantive expertise needed to properly address the issues contained in the pending bill and to examine the issues that we believe need to be addressed. These issues are:

1. **Foreign lobbying.** By this we mean United States and foreign citizens who are acting in a representational capacity on behalf of foreign entities. This does not include accredited diplomatic, official or consular offices, or officers of foreign governments.

The pending bill does not adequately deal with the issue of the influence of foreign interests in lobbying. The initial thought among some of us is to prohibit foreign governments from hiring lobbyists in an effort to exert a disproportionate influence in the legislative and executive branches of government. Their views can be represented through legitimate government to government contacts.

Letter to the Speaker

Page Two

While we do not want to impinge on Constitutional rights, at the very least we should consider strengthening and clarifying existing requirements in a way that makes the registration of foreign lobbyists more accessible and visible to the American people.

2. **Legislative Service Organizations and their affiliated organizations.** We have read various reports of contributions of foreign governments and lobbyists representing foreign interests to certain foundations and legislative service organizations in the Congress. We are concerned that the pending legislation does not adequately address those type of contributions.

We should ensure that legislative service organizations and their affiliated organizations be covered under the new law so that no loopholes exist that allow the circumvention of new or existing requirements.

3. **Executive Branch lobbying.** We also believe that there are some areas governing Executive Branch requirements that need strengthening and tightening. For instance, we are concerned that the bill's current threshold for coverage of executive branch officials is too high. We would like to expand the contents of lobbyist reports to include important information to increase public awareness and confidence. For example, we suggest:

- o Requiring greater specificity in disclosure of Executive Branch officials about who was specifically lobbied by activities of for-profit and non-profit efforts to influence policy, regulations, nominations, obtain grants, and influence other governmental decisions.

- o Requiring greater categorization of expenditures by lobbyists into meals, entertainment, grassroots and other delineations for all or major issues or efforts lobbied.

- o When an individual incurs expenses in an effort to influence Executive branch decisions or Legislative Branch decisions and those expenses are reimbursed by another party, those amounts and activities must be disclosed.

4. **The role of "consultants."** We are increasingly concerned that certain people are appearing in the media who purport to represent the Administration's view on pending public policy issues. However, to the best of our knowledge those people are not full-time Administration officials. We are concerned that this practice is confusing to the general public and could create the potential for abuse by allowing a select few to gain undue access to key public officials.

In particular, legislation should be developed which would, at a minimum, disclose the work, interests or possible conflicts of interests of volunteers, national party-paid consultants or special government employees working within the Executive Branch on speeches or administration initiatives by triggering disclosure requirements when an individual is entitled to

Letter to the Speaker
Page Three

enter governmental offices beyond that access given to the general public.

We would, therefore, like the appropriate Committees to review expanding the contents of lobbying reports to include significant "consulting" of Executive Branch (as opposed to lobbying) activities that influence governmental policy and decisions.

5. **Non-profit/For-Profit Lobbyists.** In the current bill, non-profit lobbyists may be still treated differently from for-profit lobbyists. We believe that the playing field should be leveled and that the same rules should apply to both for-profit and non-profit lobbyists.

These are just some of the areas that we have discovered that need greater examination. There may be more. Short-circuiting the regular legislative process, such as by trying to pass this legislation under suspension of the Rules without full Committee consideration, would be an abdication of our responsibility both to you and to our constituents. We respectfully request that hearings in the appropriate Committees of jurisdiction commence immediately, followed as soon as possible by full Committee mark ups so that the process is as open as possible.

We remain confident that these concerns can be resolved in a fashion that will result in the most effective legislation being passed and signed into law. We look forward to cooperating with you and the task force toward that end.

Thank you very much.

Sincerely,

Nest Gingrich

Bob Mitchell

Bob Livingston

Orange W. Quinn

Bill McCollum

ATTN: Schedulers



House Republican Policy Committee

Henry J. Hyde, Chairman

1616 Longworth HOB, Washington, D.C. 20515, (202) 225-6168

Meeting Notice

Special Briefing

Topic: *Lobbying Reform*
Date: *March 9, 1994*
Time: *1:30 p.m.*
Place: *H-227, the Capitol*

Rob Michel (IL)
 Newt Gingrich (GA)
 Dick Armey (TX)
 Duncan Hunter (CA)
 Bill McCollum (FL)
 Tom DeLay (TX)
 Bill Paxon (NY)
 Bill Archer (TX)
 Joseph M. McDade (PA)
 John R. Kasich (OH)
 Gerald B. Solomon (NY)
 Mike Crapo (ID)
 Edward R. Royce (CA)
 Lamar Smith (TX)
 Mel Hancock (MO)
 Floyd D. Spence (SC)
 Steve Buyer (IN)
 Michael G. Oxley (OH)
 William F. Goodling (PA)
 Nancy L. Johnson (CT)
 John A. Boehner (OH)
 Gary A. Franks (CT)
 Tillie K. Fowler (FL)
 Pete Hoekstra (MI)
 Doug Bereuter (NE)
 Steve Gunderson (WI)
 J. Dennis Hastert (IL)
 Ernest J. Istook, Jr. (OK)
 Tom Lewis (FL)
 Jan Meyers (KS)
 Dennis Roe-Lahti (FL)
 Craig Thomas (WY)
 Barbara P. Vucanovich (NV)
 Dick Zimmerman (NJ)

Tom Smeaton
 Executive Director

March 4, 1994

FROM: HENRY HYDE
TO: ALL REPUBLICAN MEMBERS

At the request of our Leadership, the Policy Committee will hold a special briefing for Republican Members on lobbying reform on Wednesday, March 9 at 1:30 in Room H-227 of the Capitol. Mr. Bryant and Mr. Gekas, Chairman and Ranking Member of the Subcommittee on Administrative Law and Government Relations, will outline the Lobbying Disclosure Act of 1993, and an open discussion will follow.

I encourage Members to attend and express their views.

Due to space limitations, only specifically invited staff may attend.

224

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

May 19, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-2758

TO: Legislative Liaison Officer -

JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
OPM - James N. Woodruff - (202)606-1424 - 331

FROM: JAMES J. JUKES (for) *Jic*
Assistant Director for Legislative Reference

OMB CONTACT: Ingrid SCHROEDER (395-1883)
Secretary's line (for simple responses): 395-3454

SUBJECT: OGE Proposed Report RE: S 1935, Prohibition
of Lobbyists' Gifts to Legislative Branch
Officials

DEADLINE: COB May 23, 1994

COMMENTS: Please advise if there are any objections to having
OGE submit their comments in the form of a bill report to the
House Judiciary Committee.

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

Chris Edley
Margaret Shaw
Ken Schwartz
Harry Meyers
Adrien Silas
Frank Reeder
Bob Rideout
Ray Kogut
Bob Damus
Mac Reed
Jennifer Palmieri

Donsia Strong
Michael Waldman
Todd Campbell
Beth Nolan
Melissa Cook
Barbara Kahlow
Richard Loeb
Jeff Hill
Karen Hancox
Jim Murr

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: Ingrid SCHROEDER
 Office of Management and Budget
 Fax Number: (202) 395-3109
 Analyst/Attorney's Direct Number: (202) 395-3883
 Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

SUBJECT: OGE Proposed Report RE: S 1935, Prohibition
 of Lobbyists' Gifts to Legislative Branch
 Officials

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur
 _____ No objection
 _____ No comment
 _____ See proposed edits on pages _____
 _____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

May 18, 1994

MEMORANDUM

TO: James J. Jukes (for)
Assistant Director for Legislative Reference

FROM: *Gary Davis*
Gary Davis
General Counsel

SUBJECT: OMB Request for Views RE: S. 1935, Prohibition of
Lobbyists' Gifts to Legislative Branch Officials

This is in response to your Legislative Referral Memorandum, LRM #1-2706, dated May 13, 1994, requesting the views of the Office of Government Ethics (OGE) concerning S. 1935. The ethics provisions of concern for the executive branch are contained in sections 4, 5, 6, and 11.

• Section 4 would amend the Ethics in Government Act to require filers of Public Financial Disclosure Reports to report all gifts of \$20 or more, unless the gifts are food, lodging, or entertainment. These gifts must only be reported if they are given by a person required to register under the Federal Regulation of Lobbying Act, the Foreign Agents Registration Act, or any successor Act; and are gifts that would be prohibited by 5 U.S.C. § 7353 (barring gifts from prohibited sources). There is a personal friendship exception, which may permit acceptance of such gifts under current executive branch standards of conduct regulations.

There are several problems we see with this provision. First, the provision places a heavy burden on a filer to check each time a gift of \$20 or more is received whether the donor has registered as a lobbyist or foreign agent. Then the filer must check to determine whether the gift is from a prohibited source. Finally, the reporting threshold is lowered substantially. Currently, filers report gifts aggregating more than \$250 from a single source, but do not include in the aggregation gifts with a fair market value of \$100 or less.

• Section 5 proposes restrictions on post employment activities of federal employees. Briefly, this provision would do the following:

1) Senior employees would become anyone whose basic rate of pay is equal to or greater than 120% of the basic rate of pay of a

James J. Jukes
Page 2

GS-15, i.e., approximately \$80,000. In the executive branch this would include the entire Senior Executive Service and the top pay levels of GS-15.

2) All one-year cooling off bans contained in 18 U.S.C. § 207 would become two-year bans.

3) The trade and treaty provision of 18 U.S.C. § 207(b) would become a 10 year restriction.

4) The foreign entity ban of 18 U.S.C. § 207(f) would expand from representing, aiding or advising foreign governments and political parties to include "a corporation, partnership, or other nongovernment entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States."

The date of these amendments is to be "after" January 1, 1995. It is not clear what that means. It appears the intent may have been to be effective on January 1, 1995.

This Office has testified many times regarding proposed restrictions on post employment activities of federal employees before the Federal government. We worked closely with Congress in the recent amendments to the basic post employment criminal prohibition, 18 U.S.C. § 207. The Office of Government Ethics does not believe the additional amendments contained in S. 1935 are necessary or appropriate at this time.

As you know, President Clinton issued an Executive Order requiring his senior appointees and trade negotiators to sign pledges governing their post employment activities before the federal government. These pledges, which are enforceable through injunctions, debarment, and recoupment, reflect the most stringent post employment restrictions ever imposed on senior noncareer officials. The proposal contained in this bill goes significantly beyond both the current statutory post employment provisions and the President's Executive Order.

It appears this bill would apply the two-year, branch-wide cooling-off period to a much larger group of employees, both noncareer appointees and many career employees, than are currently covered, including the entire Senior Executive Service and apparently GS-15 employees earning \$60,000 or more.

We see no evidence that these provisions need to be enacted into law. It is particularly troubling that the proposed legislation would criminalize the activities it prohibits. The penalties associated with a violation of these provisions is substantial: the maximum penalty is a fine of \$250,000 for each count, with the addition of a potential maximum five year sentence.

James J. Jukes
Page 3

The criminal law should not be used to enforce ethics standards without a clear indication that the activity prohibited poses a serious threat to the conduct of good government. In our view, this legislation goes beyond that which the government has a legitimate need to control, and thus threatens good government by posing unnecessary impediments to recruitment and retention of the most qualified individuals.

Finally, the most recent amendments to section 207 have been in effect for only slightly over two years. The President's pledges have been in effect for a little over one year. We should give these new provisions the necessary time to operate, rather than legislating and adding to the already complex array of post employment restrictions.

• Sections 6 and 11. These provisions deal with legal defense/expense funds. The concept for these provisions is that a person registered as a lobbyist or foreign agent is treated as a prohibited source who may not contribute to a legal defense fund. However, this bill would not limit other persons from contributing to such a fund. There is no apparent rationale for these provisions. It is not clear why such donations pose a problem.

Lobby Reform

EXECUTIVE OFFICE OF THE PRESIDENT

25-May-1994 08:25am

TO: Ingrid M. Schroeder

FROM: Michael Waldman
Office of Communications

CC: Bruce N. Reed
CC: Donsia Strong
CC: Christopher F. Edley, Jr.
CC: Karen L. Hancox

SUBJECT: OGE proposed comment on lobbyist gift bill

I have a strong objection to at least one part of the proposed OGE comment on the gift bill.

The OGE appears to oppose, or at least sees severe problems with, the requirement that individuals who file public financial disclosure reports disclose all gifts from lobbyists (other than food, lodging, or entertainment).

This is a proposal that the President has publicly endorsed on several occasions. It is modeled after a proposal he fought for in Arkansas when he was governor. It is highly controversial, yet passed the Senate by something like 95-3. It may be that the House and Senate bills differ in whom the disclosure requirement is placed on -- the lobbyist or the lawmaker. It may be that the House provision is superior, though I don't really know. (I doubt it.) But I believe that given our silence overall on the provisions of this bill that relate to the legislative branch, we should not fire our first salvo at our own position!

I do not have an objection to the second part of the OGE letter -- it seems to rehash an earlier, negotiated-out statement they made during testimony on the Boren bill. I question whether an OGE letter on this subject alone makes sense.

Given that the legislation has now passed both houses, and is in conference, I believe that it is appropriate for the administration to weigh in on matters (such as the revolving door provision) that clearly affect the executive branch, and in a general manner on the other provisions of the bill.

We need to decide, however, what the best way to do this is -- whether it's an OGE letter, a presidential letter, a broad pronouncement on the need for reform coupled with quiet lobbying against the Boren revolving door provision, or whatever.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

27-May-1994 08:22am

TO: Bruce N. Reed
FROM: Michael Waldman
 Office of Communications
CC: Donsia Strong
SUBJECT: Lobby reform

It would be very helpful to talk before today's meeting with the counsel's office.

Stephanopoulos thinks we need to produce a letter for the President to send to the Hill on lobby reform (as well as on campaign finance reform, which Cutler and I have been pushing).

I'm certainly for this. We need to get a draft in Tuesday am. I want to see if we can produce a draft for discussion/circulation by today's meeting.

So . . . call me (x62272 or x67151) when you can.
THANKS

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
-----------------------	---------------	------	-------------

001. memo	Reed to Dornia Strong re: Chris Edley (1 page)	5/24/94	P5, P6/b(6)
-----------	--	---------	-------------

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Clinton Presidential Records,
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 8428

FOLDER TITLE:

{Lobbying Reform}-General [1]

ru52

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

EXECUTIVE OFFICE OF THE PRESIDENT

25-May-1994 09:02am

TO: Michael Waldman

FROM: Christopher F. Edley, Jr
Office of Mgmt and Budget, EG

CC: Ingrid M. Schroeder
CC: Bruce N. Reed
CC: Donsia Strong
CC: Karen L. Hancox

SUBJECT: RE: OGE proposed comment on lobbyist gift bill

Ingrid --

Please lean heavily towards Waldman on all these matters. If you run into trouble with the agencies, convene an interagency meeting of POLICY LEVEL officials for me to chair to get to closure, when appropriate. I agree with Michael that the Administration should get on record with the conferees in a relatively comprehensive way. Michael must provide the political judgment on what level of detail will be productive, and what kinds of signals will be counterproductive.

Main point of my message is that we have to be sure our process prevents a vies letter from getting bogged down.

Thanks.

EXECUTIVE OFFICE OF THE PRESIDENT

31-May-1994 09:36am

TO: Donsia Strong
FROM: Michael Waldman
Office of Communications
CC: Bruce N. Reed
SUBJECT: RE: WJ editorial

In re: Donsia's memo on the consultants . . .

There is already a process going on, through Mack McLarty's office and the Counsel's office, to resolve the issue. (It's McLarty, Paul Toback, Cheryl Mills, Patsy Thomason, and I've been a little involved too.)

Dee Dee will have to brief today, and has neutral talking points. But there may be a need for further resolution.

EXECUTIVE OFFICE OF THE PRESIDENT

31-May-1994 01:30pm

TO: Donsia Strong
FROM: Michael Waldman
Office of Communications
CC: Bruce N. Reed
SUBJECT: RE: WJ editorial

I don't agree on the consultants issue -- we're far from having our position satisfactorily resolved on that matter.

The President should not mention consultants in his letter, I don't think -- they would fall under a category of lesser issues in the legislation (e.g., the revolving door provisions, the location of the enforcing agency, etc.) that aren't mentioned in a broad-brush paragraph of support.

I agree there is the potential for embarrassment, but we're there already -- I could be wrong, but I don't think a letter compounds it.

*File
Lobby
Reform*

WESTERN UNION TELEGRAM

RECEIVED
DEPARTMENT OF JUSTICE

IPM

FILING INFORMATION: 041394 1007A EST
ORIGIN CITY AND STATE: WASHINGTON DC

MSGCN: 9410309996894360 DLR
94 FEB 13 P2:16

ATTORNEY GENERAL RENO
US DEPT OF JUSTICE
10 AND CONSTITUTION
WASHINGTON DC 20530

EXECUTIVE SECRETARIA

COMMON CAUSE STRONGLY URGES THE JUSTICE DEPARTMENT TO MAKE CLEAR TO THE PUBLIC THAT IT OPPOSES THE PROVISIONS AMENDING 18USC201 CONTAINED IN THE HOUSE-PASSED VERSION OF S.349, THE LOBBYING DISCLOSURE ACT OF 1994. THESE PROVISIONS, IF ENACTED, COULD FUNDAMENTALLY UNDERMINE A KEY ANTI-CORRUPTION CRIMINAL STATUTE THAT COVERS MEMBERS OF CONGRESS AND OTHER PUBLIC OFFICIALS AND COULD CRIPPLE PENDING DEPARTMENT OF JUSTICE MATTERS INVOLVING ALLEGED ILLEGAL GRATUITIES AND MEMBERS OF CONGRESS.

FRED WERTHEIMER
PRESIDENT
COMMON CAUSE

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: WERTHEIMER, FRED, PRESIDENT, COMMON CAUSE, WASHINGTON, DC
To: AG. ODD: NONE
Date Received: 04-13-94 Date Due: NONE Control #: X9404141137

Subject & Date
04-13-94 TELEGRAM URGING DOJ TO MAKE CLEAR TO THE PUBLIC THAT IT OPPOSES THE PROVISIONS AMENDING 18 U.S.C. 201 CONTAINED IN THE HOUSE-PASSED VERSION OF S.349, THE LOBBYING DISCLOSURE ACT OF 1994. ADVISES THAT THESE PROVISIONS, IF ENACTED, COULD FUNDAMENTALLY UNDERMINE A KEY ANTI-CORRUPTION CRIMINAL STATUTE THAT COVERS MEMBERS OF CONGRESS AND OTHER PUBLIC OFFICIALS AND COULD CRIPPLE PENDING DOJ MATTERS INVOLVING ALLEGED ILLEGAL GRATUITIES.

Referred To:	Date:	Referred To:	Date:
(1) CRM:HARRIS	04-14-94	(5)	
(2)		(6)	
(3)		(7)	
(4)		(8)	

INTERIM BY:
Sig. For: CRM

DATE:
Date Released:

W/IN:
PRTY:
1Z
OPR:
CYN

Remarks
INFO CC: OAG (RENO), DAG, OLA, OPD.
(1) FOR APPROPRIATE HANDLING.

Other Remarks:

FILE:
L940414 1298

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY



**INDEPENDENT
SECTOR**



Raul Yzaguirre
Chairperson

Gwendolyn C. Baker
Vice Chairperson

Norman A. Brown
Vice Chairperson

Dudley H. Hafner
Vice Chairperson

Valerie S. Lies
Vice Chairperson

Alicia A. Philipp
Vice Chairperson

Jerry Yoshitomi
Vice Chairperson

Emelda M. Cathcart
Treasurer

Sanford Cloud, Jr.
Secretary

Brian O'Connell
President

Eugene C. Dorsey
Immediate Past Chairperson

Board of Directors

Rebecca Adamson
Thomas F. Beech

Anne L. Bryant
Peter McE. Buchanan

Rev. Joan Brown Campbell
Elaine Chao

Dennis A. Collins
Anne Cohn Donnelly

Sara L. Engelhardt
Anne V. Farrell

Barbara D. Finberg
Robert M. Frehe, Jr.

John W. Gardner
Mary M. Gates

Peter Goldberg
William H. Gray III

Paul Grogan
Raymond L. Handlan

Joanne Hayes
Antonia Hernandez

Gracia Hillman
Ira S. Hirschfeld

Sihyl C. Jacobson
Anna Faith Jones

Stanley N. Katz
John D. Kemp

Felicia B. Lynch
Cynthia Mayeda

I. Michael McCloskey
Rev. J. Oscar McCloud

Catherine E. McDermott
Wayne Meisel

Anne Firth Murray
Bruce L. Newman

Janice Petrovich
Doroithy S. Rittling

Rebecca W. Rimel
James P. Shannon

Yvonne Shepard
Fred Silverman

Clifford V. Smith, Jr.
Eddie N. Williams

Eugene R. Wilson
Adam Yarmolinsky

April 20, 1994

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

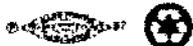
Thank you for giving so generously of your time on April 12 to address and meet individually with leaders from voluntary organizations, foundations, and corporate giving offices from throughout the nation. We were very encouraged by your knowledge of and commitment to the independent sector and to a "partnership with people in community organizations all across the country...." The day was a very special one for our Members and in the spirit of your comments we wanted to let you know how your policies have affected the independent sector.

We are especially grateful to you for the legislation, enacted in 1993, that made gifts of appreciated property fully tax deductible. Appreciated property gifts have increased dramatically in recent months as the result of the enactment of that important legislation, to which your administration gave such strong leadership and support.

We are also grateful that Treasury's proposal related to nonprofit compliance with the law will provide IRS with the mechanism of intermediate sanctions to assist in bringing a charity into conformance with the law. The Treasury proposal is consistent with our recommendations and, if enacted, will help substantially to strengthen the performance and accountability of nonprofit organizations.

We were encouraged by your statement that "the notion that the government has to empower people to take control of their own lives depends upon the ability of people to organize effectively, to lobby their government, to influence our policies, and also to tell us what they know is the truth." There are two actions you can take to strengthen this empowerment.

One action is needed almost immediately. The Lobby Disclosure Act will go to conference within the next several weeks and it must be amended in Conference to protect nonprofits from a needless double reporting burden which is a threat to the very community organizations about whom you spoke so eloquently. I am enclosing our amendment, with an explanation, and hope that you will ask your staff to contact the sponsors of the legislation, Senator Carl Levin and Congressman John Bryant to let them know of your administration's support of our position. To date, your administration has not supported our requests for modification of the legislation and we hope that, in light of your comments regarding the importance of advocacy, you will be willing to intervene in this exceedingly important matter.



The President
April 20, 1994
Page Two

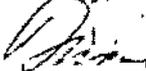
We also want to call your attention to a recent action by your appointees at the Corporation for National and Community Service which seems inconsistent with your statement about the importance of citizen advocacy. The Corporation's recently promulgated rules prohibit program participants from engaging in any advocacy activities, except on their own time. Yet the language of the Act is properly broad enough to allow National Service Program participants to engage in advocacy activities in the course of their service, especially if no government funds are used. Last ditch efforts were made by congressional opponents of the Act to eliminate any advocacy activities from the program, and those efforts were defeated by your administration and the Act's supporters. You indicated in your session with us that you could not "succeed as president unless we succeed in mobilizing millions of our countrymen and women for the important tasks that face us." Who better to help make that happen than young people who are learning first hand through their National Service experience about the enormous human needs facing this nation.

Your commitment to the independent sector came through clearly, so we are encouraged to hope that your administration will reverse it's position that led to making permanent the 3% floor on itemized tax deductions, including charitable deductions. Not only is the floor on charitable deductions a disincentive to charitable giving, it sets a terrible precedent. Once a floor is established on a tax deduction, Congress is almost always inclined to increase it. The floor on the medical deduction is a case in point. We plan to have legislation introduced shortly that would remove the charitable tax deduction from the 3% floor and we urgently request that you support that initiative.

You said, "Much of what I try to do here is designed to empower people to live up to the fullest of their own capacities and to face their problems in their own ways most effectively." We want to help you in that effort and you can help us to do so by supporting these legislative initiatives that encourage the lobbying and advocacy rights of nonprofits and promote tax policies that foster charitable giving.

Thank you once again for making the open house so memorable. We look forward to working closely with you so that all in our society can "make a life."

Sincerely,


Brian O'Connell

Enclosure

cc: First Lady Hillary Rodham Clinton

From the Desk of
MELANNE VERVEER

*Dorcia is there
anything that
can be done
to keep them from
operating under
two definitions of lobbying?*

Position of Nonprofit Organizations
Regarding the Lobbying Disclosure Act of 1994
(S.349/H.R.823)

Require charitable organizations [501(c)(3)s] to disclose their executive branch contacts according to the Lobbying Disclosure Act and disclose all legislative activities and contacts according to section 4911(d) of the Internal Revenue Code. Accept the \$5,000 per organization registration and semi-annual reporting threshold in the Senate version of the bill and require charities to file semi-annual reports beginning in the first period after the \$5,000 registration threshold is exceeded.

If conferees agree to the \$5,000 semi-annual threshold for disclosing lobbying contacts, many small nonprofits will not be required to disclose their lobbying because they spend less than that amount in a six month period.

If conferees accept our proposal to disclose Executive Branch lobbying, as disclosure is required under the LDA for other groups, we will still be able to use IRS rules to disclose our contacts with committees as well as our lobbying expenditures. And we will have met the objections of those who contend that our position calling for nonprofits to be permitted to disclose lobbying based solely on our IRS rules would give us unfair advantage over other groups.



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 20, 1993

The Honorable Jack Brooks
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter requesting comment on H.R. 823, the "Lobbying Disclosure Act of 1993."

The Administration strongly supports the purpose of this legislation. We are committed to insuring that all citizens are aware of the influence brought to bear on the development of government policies, regulations, laws and legislation. H.R. 823 establishes uniform disclosure requirements for Executive and Legislative Branch lobbying. It repeals the patchwork of existing lobbying disclosure statutes and streamlines the entire disclosure process for those who must comply.

In addition, the bill establishes a new Office of Lobbying Registration and Public Disclosure within the Department of Justice. We believe that the Department of Justice, with its experience in administering and enforcing the Foreign Agents Registration Act (FARA) since 1942 and its experience in enforcing the Federal Regulation of Lobbying Act, is uniquely qualified for the responsibility of administering and enforcing the provisions of the bill.

As the President stated in his letter to the Subcommittee, dated March 31, 1993, the Administration is anxious to work with you to strengthen and clarify H.R. 823. We do have several significant concerns with the bill as presently drafted, which we hope can be addressed. Accordingly, we strongly recommend, based on the experience of some Executive Branch departments and agencies in implementing, administering and enforcing the various disclosure statutes, that Congress go beyond the language of the present bill and adopt legislation that will be more effective than the provisions of H.R. 823 as introduced, and that will compel disclosure in a timely manner.

Definition of Lobbyist

Our first concern is that the bill's definition of lobbyist in Section 3(10), excluding those whose lobbying activities are "only incidental" and "not . . . significant", is imprecise and, in our view, creates a loophole that will undermine meaningful lobbying disclosure. We recommend use of a bright line test of what constitutes a lobbyist and we look forward to working with you to craft appropriate language. For example, a threshold amount expended for lobbying, e.g., \$5,000 in a six-month period, could trigger the obligation to register, or a test that focuses on the client's overall lobbying efforts rather than the lobbyist might be fashioned (cf. the Federal Election Campaign Act, 2 U.S.C. § 431 et seq.). An alternative approach would be to make any exemption explicit and precise in its scope.

This bill provides for a potentially significant loophole in that it fails to require the disclosure of individuals who pay a lobbyist to lobby on behalf of another. Organizations that participate in coalitions are excluded from disclosure if their payments do not exceed \$5,000 over a six-month period, or they do not significantly participate in the supervision or control of the lobbying activities, or they do not have a direct financial interest in the outcome of the lobbying activities. Terms such as "significantly participate", "supervision or control", "direct financial interest", and the "outcome" are so ambiguous that ensuring that this exception is not abused will be virtually impossible, particularly since all three criteria must be satisfied before disclosure is required. In addition, the bill provides no mechanism for disclosing the existence or participation in ad hoc coalitions where lobbyists for different organizations or clients work in concert on an issue or goal of common concern. Such ad hoc coalitions often take on a deceptive or unassuming name to hide the identity of the real players. This bill should insure that this type of activity is disclosed by requiring each registrant to name any ad hoc coalition and/or participants with which it participates, irrespective of whether the coalition pays any of the participants. The Administration believes it is critical that any reform address all modes and structures by which influence is exercised. As we indicated above, the disclosure of all the principals in all lobbying efforts is essential to public awareness of all factors influencing governmental decisions.

NAACP
v.
BUTTS
violations

Precision of Financial Disclosures

Second, more accurate and precise financial disclosures than those provided in Section 5 of the proposed bill should be required. Estimates or ranges are valid when disclosure focuses on items of fluctuating value, such as houses, cars, stocks, and bonds, or nebulous concepts like financial net worth, but have no place in disclosures about fees and expenses. Presumably, a paid

lobbyist is capable of maintaining adequate records of receipts to meet his or her obligations to the Internal Revenue Service, and these figures are deprived of their meaning if they are converted to estimates ranging from tens of thousands to hundreds of thousands of dollars. On the other hand, the public benefits by knowing not only exactly how much money lobbyists spend, but also the date and purpose of the expenditures, so that they can evaluate the impact of the lobbyists' expenditures on the legislative process.

In addition, we believe that lobbyists should be required to disclose specific amounts for expenditures in certain crucial areas such as entertainment, travel and advertising. Moreover, H.R. 823 should provide for complete disclosure of grassroots activities. Very often, public servants are faced with a host of artificially generated correspondence and telephone calls. Many lobbyists expend substantial amounts of money in an attempt to suggest to those in public service that their cause or position has substantial public support. There should be separate line item disclosure of sums expended on grassroots activities and the issues advanced.

Civil Monetary Penalties

Third, the bill's provisions for civil monetary penalties for violations of the Act could be substantially strengthened by insuring that violators never profit from their wrongdoing. Lobbyists who knowingly fail to comply with the provisions of the bill should forfeit their fees. This could be accomplished by adopting provisions based on the Department of Housing and Urban Development Reform Act of 1989 (P.L. 101-235), which provide a civil money penalty at the greater of a fixed amount or the amount paid to the lobbyist with respect to the violation.

Contingent Fees

Fourth, we believe this bill would be improved by a prohibition against any fee paid to a lobbyist that is contingent, in whole or in part, on the success of any lobbying activities. Similar provisions are contained in the HUD Reform Act and FARA. Contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence. Commissions paid on sales would not be prohibited under this provision.

Registration

We also note possible problems with respect to what constitutes an inactive registration and with the timeliness of the initial registration as provided for in Section 5. Inactive

registrants, in our view, should be defined as those whose total receipts and (not "or") total costs are less than \$5,000 in a semi-annual period. To use the disjunctive is to invite the structuring of payments so as to avoid disclosure.

Enforcement Mechanisms

We urge the Committee to strengthen and clarify the enforcement mechanisms in the bill (e.g., Sections 8(d) and 9(d)). The bill does not afford the Director sufficient investigative authority to insure that all those who register should, and that those who do register make full and accurate disclosure. We favor the informal resolution of disputes whenever possible, but there must also be tools such as administrative fines, civil investigative demands and, as a last resort, criminal sanctions for those who choose to avoid the bill's registration and disclosure requirements. Experience has shown that the informal resolution process is greatly enhanced by the presence of more severe penalties.

Section 7(b)(1) of H.R. 823 requires the Department to close out a possible enforcement action if the party submits information showing a violation was "unlikely". Coupled with the Department's lack of proper tools to investigate, this will allow violators to submit just enough information to meet the "unlikely" test and evade the disclosure required by H.R. 823. Therefore, the Department suggests that the provision be clarified to make plain that the registrant is required to show that he or she is in compliance with the Act.

Both HUD and FARA provisions require registrants to keep and preserve records relating to their activities, the disclosure of which is required by the respective statutes. H.R. 823 should also so provide; otherwise, those seeking to evade the law or enforcement efforts may claim that relevant records of lobbying activities are "nonexistent". To ensure that the Department is able to obtain relevant information and to pursue instances of noncompliance, authority should be given to the Attorney General to issue civil investigative demands where a possible violation is indicated.

Section 7(b)(2) requires the Department to treat a "substantial noncompliance" as a "minor noncompliance" if the person admits there was a noncompliance and corrects it, without any regard as to the egregiousness of the noncompliance. This allows the person to engage in a deliberate course of conduct designed to evade disclosure and, if caught, to say, "I'm sorry, I'll disclose", and pay a smaller penalty. In fact, this provision serves as an incentive to noncompliance. The Administration recommends that the bill be revised to treat significant noncompliance, admitted or not, as provided in Section 8.

The Appointments Clause

Section 8(e)(1) of the bill would prohibit the Director of the Office of Lobbying Registration and Public Disclosure from imposing a civil penalty for violations of the Act:

"in an amount greater than that recommended by an administrative law judge after a hearing on the record under Subsection (a)(3) unless the Director determines that the recommendation of the administrative law judge is arbitrary and capricious or an abuse of discretion."

The Appointments Clause of the Constitution, art. II, sec. 2, cl. 2, authorizes the President, by and with the advice and consent of the Senate, to appoint officers of the United States. The clause further provides that Congress may vest the appointment of "such inferior officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." (Emphasis added.) We believe that giving administrative law judges the authority to make decisions binding on the Director, and thus ultimately on the Attorney General, subject only to review under the arbitrary and capricious or abuse of discretion standards, raises constitutional concerns. Officers who make decisions without being subject to the supervision and control of superiors cannot meaningfully be considered inferior officers.

Since the bill appears to permit the appointment of administrative law judges in a manner reserved for the appointment of inferior officers, while at the same time effectively insulating their decisions from review, we believe that the limitation on the reviewability of their decisions raises a substantial question under the Appointments Clause.

We do not believe that the limited review available to the Director is sufficient to obviate this constitutional problem. The arbitrary and capricious and abuse of discretion standards, devices with long histories in administrative law, do not permit the Director (nor, by extension, the Attorney General) to substitute his or her judgments for those of the administrative law judge. Review under the arbitrary and capricious standard, for example, is limited to only "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The (Director) is not empowered to substitute [his] judgment for that of the [ALJ]." Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971) (citations omitted). Because the ALJs' judgments would therefore still be beyond the Director's supervision and control, we are not persuaded that administrative law judges may be appointed in the manner that the Constitution reserves for the appointment of

inferior officers. Cf. Statement on Signing the Omnibus Budget Reconciliation Act of 1989, 25 Weekly Compilation of Presidential Documents 1970, 1971 (December 19, 1989) (objecting to imposition of an arbitrary and capricious standard of review for review of special master decisions by Claims Court judges as inconsistent with the requirements of Article II).

In order to remove the Appointments Clause problem, we recommend that the bill be changed to make the findings of administrative law judges under the Act subject to de novo review by the Director.

Revisions to FARA

Another concern involves the bill's proposed revision of FARA in Section 13. By restricting the definition of foreign principal to foreign governments and foreign political parties, the bill (contrary to current law) would allow foreign individuals, associations and corporations to attempt to influence American public opinion and United States policy without making any disclosure under FARA. Only if they also engaged in lobbying contacts as defined by this bill would they be required to make any disclosure of their activities, and such disclosure would be significantly less than is now required under FARA. This would allow agents of entities supporting terrorist activities to attempt to influence American public opinion and United States policy without making any disclosure under either FARA or the Lobbying Disclosure Act of 1993. Further, this would impose on the Government the burden to prove in any litigation that the agent represents an entity meeting the Act's definition of a foreign government or foreign political party, a difficult, if not insurmountable, obstacle in cases involving covert agents and clandestine foreign organizations. We recommend that the present definition of "foreign principal" in Section 1 of FARA be retained in its entirety, and a provision be added stating that registration and disclosure by commercial entities under the Lobbying Disclosure Act satisfies the reporting obligations of FARA.

We point out that the bill establishes within the Department an "Office of Lobbying Registration and Public Disclosure" to administer and enforce its provisions. The office would require funding, it is estimated, in the range of four to seven million dollars a year, as well as several million dollars in start-up costs for personnel and equipment, including a computer system which is compatible with that of the Federal Election Commission.

[In this connection, we also think the bill could be improved by an amendment permitting the new office to charge and retain fees for providing documents and research services to the public.] The office would use these fees to offset the cost of providing the service and spend them without further action by the Congress. Similar language currently allows the Department of Justice to

establish and collect administrative (as well as registration) fees under the Foreign Agents Registration Act.

Reporting Requirements

Finally, the Byrd Amendment requires yearly reports evaluating the effectiveness and compliance of the existing disclosure program. However, H.R. 823 removes the requirement for agencies to collect and compile the information that is the basis of the report. Therefore, in keeping with the information and streamlining goals of H.R. 823, we suggest striking the remaining provisions of the Byrd Amendment that relate to the yearly disclosure certification report.

Conclusion

In summary, we support the laudable goals of H.R. 823 and believe that the bill should be modified as suggested above so as to meet its stated objectives. We would be pleased to work with Committee staff to achieve that goal.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Please do not hesitate to contact me if we can be of further assistance regarding this or any other matter.

Sincerely,



Robert H. Brink
Deputy Assistant Attorney General

1. DOJ as the new entity or separate new structure
FARA office would stay within DOJ
Justice fought release of info by FOIA
2. time % vs \$% puts everyone on equal footing
Can't play games w/ overhead allotments
3. disclosure of those in coalitions not including the
test is probably unconstitutional
4. ad hoc coalitions / Senate language
5. precise dollars - more broad numbers
allows a lot of people to support
b/c they don't have to keep time.
deductibility seems to take care of this
They will have to keep more records
6. Timetable for test free - Jasso; Bryant; Hoyer; Gingrich; Boxer
McClellan; Livingston; Coker
7. Grassroots category -
8. Civil Monetary Penalties - raised up to \$200,000
9. What is success in the legislative arena? Contingent fees

10. Inactive registrants #2,500 / #5000

11. Criminal penalties; civil investigative demands
published violation and penalty
substantial noncompliance and minor noncompliance -
significant and repeated

12. App'ts Clause

13. FOIA - Loophole

14. Fees for copies - do you need a specific
amendment to collect fees OMB -
for copies etc. Adrian -

6. Prepare or brief and send it to
Congress or Exec. Branch -
not intended at time of
its preparation to be used as
lobbying.

OP-ed sent to a covered officials.
research & background costs not covered
but current copying & sending

7. Church's grass roots not covered -
free exercise of religion - not lobbying contact