

3 pages

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

April 2, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-261

File:
Lobbying Ref

TO: Legislative Liaison Officer -

COMMERCE - Michael A. Levitt - (202)482-3086 - 324
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
HUD - Edward J. Murphy, Jr. - (202)708-1793 - 215
JUSTICE - Faith Burton - (202)514-2141 - 217
STATE - Matt Winslow - (202)647-4463 - 225
TREASURY - Richard S. Carro - (202)622-1146 - 228
OGE - Jane Ley - (202)523-5377 - 261

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

OMB CONTACT: GERRI RATLIFF (395-3454)
Secretary's line (for simple responses): 395-3454

SUBJECT: OMB Request for Views RE: HR 823, Lobbying
Disclosure Act of 1993

DEADLINE: 4:00 TUESDAY April 6, 1993

COMMENTS: Please submit your views by the deadline in the form requested in the attached memo from Donsia Strong of the White House Domestic Policy Council staff. We request that the views be in bullet (rather than paragraph) form, and as brief as possible. The views will be handed out and discussed at an interagency meeting in room 9104 of the New Executive Office Building at 10:00 on Wednesday, April 7th. Each agency is asked to limit attendance to two people, including a policy-level official. For clearance into the building, please call Darcel Gayle (395-3454) with the names and birth dates of your agency's representatives by 4:00 TUESDAY. We intend to distribute agency responses to this request for views at the meeting. Attached for your information are: (1) a letter from the President in which he supports the bill and states the Administration's willingness to work with the subcommittee to strengthen it; and (2) two letters from the Chairman of the FEC on the bill.

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.

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CC:

Donsia Strong
Bruce Reed
Jack Quinn
Cheryl Mills
Melanne Verveer
Michael Waldman
Chris Edley
Bob Damus
Bernie Martin
Richard Loeb
Adrien Silas
Cora Beebo
Hilda Schreiber
Lorraine Miller

LRM #I-261

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: GERRI RATLIFF
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: OMB Request for views RE: HR 823, Lobbying Disclosure Act of 1993

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

04/02/93

11:01

E202 466 7720

WHITE HOUSE

002/003

THE WHITE HOUSE
WASHINGTON

April 1, 1993

MEMORANDUM FOR CIRCULATION

FROM:

DONNA STRONG
Domestic Policy Council

SUBJECT:

THE LOBBYING DISCLOSURE ACT OF 1993, H.R. 823

The Administration is in the process of developing executive branch comments to transmit the Administration's concerns regarding H.R. 823 to the House Subcommittee on Administrative Law and Government Relations, Committee on the Judiciary.

The bill sets forth a single statute that would replace the four primary statutes currently regulating lobbying activity disclosure. They are: The Federal Regulation of Lobbying Act; the Foreign Agents Registration Act (FARA); Section 1352 of Title 31, U.S. Code (the "Byrd Amendment"); and provisions contained in the HUD Reform Act.

Each department or agency affected by the current lobbying statutes is asked to transmit its comments or concerns about H.R. 823 to the Domestic Policy Council.

Please prepare your comments or concerns according to the attached format. Comments or concerns that affect the executive branch in general should be discussed first, with concerns particular to your department or agency following. Comments from participating departments or agencies will be discussed at the Wednesday, April 7, meeting.

Thank you for your cooperation.

04/02/03

15:02

202 466 7739

WHITE HOUSE

003/003

DEPARTMENT :

AGENCY:

RELEVANT CURRENT STATUTE (if any)

EXECUTIVE BRANCH

- Propose strengthening amendments
- Discuss proposed strengthening amendments
- Highlight perceived problems or potential abuses

INDIVIDUAL DEPARTMENT OR AGENCY

- Provide relevant statistical or anecdotal information regarding current lobbying disclosure statutes

THE WHITE HOUSE

WASHINGTON

March 31, 1993

Dear Mr. Chairman:

We in public service have an opportunity to reconnect the bonds of trust with the American people. As I have made clear from the beginning of my Administration, I believe that political reform must be a top priority. As part of that effort, I strongly support the Lobbying Disclosure Act of 1993.

Too often in recent years, our government has not served the interests of average citizens. One major reason for this is the disproportionate impact of lobbyists on the governmental process. Today, by some estimates, as many as 80,000 people work in Washington directly or indirectly as lobbyists, representing organized interests before Congress and the executive branch. To be sure, lobbying is a constitutionally protected right, and we do not propose to limit that right. But we cannot allow the clamor of organized interests -- who too often seek to preserve the status quo -- to drown out the voice of the broad middle class.

Despite the enormous impact of lobbying, and the huge sums spent for those purposes, current laws do not begin to address the public's questions about what forces influence policy. Only a small fraction of individuals who should register under current law even do so. Disclosure forms are weak, loophole-ridden and provide meaningless information. Data regarding lobbying on behalf of foreign interests is particularly inadequate. And the definitions of lobbying in current law have not kept up with the realities of the labyrinthine regulatory state.

To restore public confidence, then, we must ensure at a bare minimum that lobbying is fully

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disclosed, so the full range of activities of lobbyists is open to public scrutiny. Toward that end, I strongly endorse the passage of legislation that would strengthen and streamline lobbying disclosure, and that effectively provides the public, the media and competing interests access to information about the extent of lobbying.

This legislation would create a comprehensive, uniform statute covering all professional lobbyists without regard to which branch of the federal government they lobby. The bill provides, for the first time, a broad definition of who is a lobbyist. It requires that lobbyists identify their clients, specify on which issues they lobby, and disclose how much they spent or were paid. At the same time, it streamlines existing law to make the rules more comprehensible for individuals who must comply.

In addition, I believe the subcommittee may want to take steps to strengthen and clarify the bill. My Administration looks forward to working with the subcommittee on such improvements.

We cannot settle for business as usual in Washington; this legislation must be only the beginning of large scale political reform. My Administration has already implemented the toughest-ever restrictions on post-employment lobbying by senior officials, banning them from lobbying their agency for five years and from ever serving as a registered agent for a foreign government. We have proposed the elimination of the deductibility of lobbying expenses. This deduction inappropriately subsidizes organized interests who seek to influence the legislative process. Finally, we will shortly propose campaign finance reform legislation that will further reduce the role of organized interests in the political system.

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I look forward to working with the Congress to secure speedy enactment of this important legislation. I appreciate the hard work of the subcommittee on this issue.

With best wishes,

Sincerely,

Bill Clinton

The Honorable John Bryant
Chairman
Subcommittee on Administrative
Law and Governmental Relations
House of Representatives
Washington, D.C. 20515

FEC STAFF DIRECTOR

TEL: 202-219-2338

Apr 01 93 14:01 No. 002 P. 02



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

March 23, 1993

OFFICE OF THE CHAIRMAN

The Honorable John Bryant, Chairman
 House Judiciary Subcommittee on
 Administrative Law and Governmental Relations
 2136 Rayburn House Office Building
 Washington, D. C. 20515-4218

Dear Chairman Bryant:

In response to your letter dated March 15, 1993, contained herein is the preliminary comment of the Federal Election Commission on H.R. 523, the "Lobbying Disclosure Act of 1993."

We have asked our legal staff to review the bill in detail. There is, however, a fundamental issue that can be addressed now. Specifically, Congress may wish to consider placing the responsibility for administering this Act with the Federal Election Commission, rather than the Department of Justice. There are several benefits to be gained by this approach.

First, the Federal Election Commission already has in place the fundamental administrative apparatus to handle the bill's provisions in regard to reporting, public disclosure, advisory opinions, rulemaking and enforcement. All these functional activities are requirements for regulating campaign finance, and we already have developed the type of staff expertise, procedures, physical plant, and information technology necessary to meet these core elements of the bill. While incremental resources would be needed to absorb the work associated with a new and large regulated community, it would probably be less expensive and faster than developing this capability largely from scratch.

Second, many of the providers and consumers of the information that is to be reported are the same providers and consumers of campaign finance information. In many associations and corporations, the lobbying function and the political action committee both report to the same official, often the Vice President for Governmental Affairs. Similarly, many of the reporters, academics and public interest groups that wish to track lobbying are the same persons who track campaign finance matters. This parallel is recognized in the bill in section 6, which requires the proposed Department of Justice Office of Lobbying Registration and Public Disclosure to set up computer systems "compatible with computer systems developed and maintained by the Federal Election Commission... [so] that information filed in the two systems can be readily cross-referenced..." It strikes us as easier for all concerned if all interested parties can deal with one agency with familiar faces and consistent rules and procedures.

FEC STAFF DIRECTOR

TEL: 202-219-2338

Apr 01 93

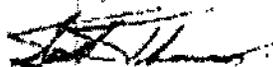
14:02 No.002 P.03

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We wish to emphasize that the Commission is not anxious to take on this new responsibility if the additional funding and staffing necessary to do the job correctly would not be provided. We are now experiencing extremely heavy workloads and strained resources with our existing mission. That said, we offer this comment in the hope that it will enable your Subcommittee to consider an option that might produce a more economical and efficient result.

If the Subcommittee is receptive to this general approach, please let me know. If you will be requesting us to testify at your hearing on March 31, 1993, or at a later date, we would appreciate as much advance notice as possible.

Sincerely,



Scott E. Thomas
Chairman

FEC STAFF DIRECTOR

TEL: 202-219-2336

Apr 02 93 14:00 No.008 P.02



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

April 2, 1993

OFFICE OF THE CHAIRMAN

The Honorable John Bryant, Chairman
 House Judiciary Subcommittee on
 Administrative Law and Governmental Relations
 2130 Rayburn House Office Building
 Washington, D.C. 20515-6216

Dear Chairman Bryant:

As a follow-up to our March 23, letter to you regarding H.R. 823, the "Lobbying Disclosure Act of 1993", the Federal Election Commission would like to provide the Subcommittee with the following additional comments on H.R. 823.

1. **Sec. 5(a). Reports by Registered Lobbyists.** The Commission has had extensive experience in receiving semiannual, quarterly, and monthly reports. We urge that the bill provide for quarterly reporting of financial information in order to give the public more timely information. We have found that there is a strong public demand for more frequent reporting. We also believe that the quarterly reporting of financial data spreads out the administrative burden for both filers and the agency more evenly during the year. The quarterly reports tend to be smaller and more quickly computerized.
2. **Sec. 5(e). Extension for Filing.** The bill provides that filers may be granted an extension of time up to 30 days, upon request, and for good cause shown. Although these reports are not tied to an election, like the FECA requirements, this "grace period" is quite generous. It will be difficult for the agency to handle the review of "good cause" and inform the filer that their request was granted or denied. The Congress should consider limiting extensions to reports due on holidays and weekends. It has been our experience that filers make the necessary effort to deliver their reports in a timely manner when the reporting dates are clear and firm.
3. **Sec. 6. Administrative Duties of the Office of Lobbying Registration and Public Disclosure.** If responsibility is placed with the Department of Justice, we would suggest a language change with respect to paragraph (b)(5)(B) so that the burden of computer-compatibility would fall on Justice rather than the FEC. We make this suggestion so that when Justice builds its system, they build one which is compatible with ours. Since the FEC system is already in place, it is

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simpler to design a new system to conform to the existing system. Otherwise, major design and redesign will be required at both points.

4. Section 6(b)(6). Administrative Duties. This paragraph requires that the Office of Lobbying Registration and Public Disclosure make copies of each registration and report filed under this Act available to the public in electronic and hard copy formats as soon as practicable after the date on which such registration or report is received. This should be more specific as found in paragraph (11).

Paragraph (11) requires that the Office provide the Clerk and the Secretary with certain information (including copies of registrations and reports) as soon as practicable (but not more than 2 working days) after the material is received or created. This same parenthetical wording should be included in paragraph 6(b)(6).

5. Section 8. Determinations of Noncompliance. Subparagraph 8(a)(2)(A) provides that if the Director determines that the person is involved in a case of significant noncompliance, the person has 30 days to request an oral hearing before an independent presiding official. Given the large number of reporting persons, this provision could be very burdensome for any administering agency. We would recommend a simplified administrative process such as presently employed by the Commission in its enforcement process rather than the formal process of 5 U.S.C. 556.
6. One provision which did not appear in H.R. 823 is a requirement to set up a revolving fund for receipts from the sale of documents and other services or products. The Commission has encountered higher cost over the years as we provide more information and services to the public. Although all the receipts from these sales of publications or documents go back into the general Treasury, these receipts are lost to the agency. Authority for a revolving fund for publications and services would permit the agency to recycle those funds back to cover the costs of producing publications and services which the public has shown a desire to purchase.
7. Another provision not currently in the bill is a section or phrase relating to possible costs for making copies of documents. The Commission has had experience in this area because we have charged a minimal amount for copies. The FECA requires us to make documents available for copying "at the expense of the person requesting such copying..." This has permitted copying documents at a minimal cost (now \$.05 per page) and caused people to think about whether they really need everything that is on file. While we suggest a minimal fee for copying documents, we also strongly suggest companion language stating that it be a minimal charge.

FEC STAFF DIRECTOR

TEL: 202-219-2338

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-3-

0. Should Congress decide to place the responsibility for administering this Act with the FEC, you should also consider how much of the responsibility now required under the Foreign Agents Registration Act, if any, will be conferred on the FEC.

The Commission appreciates the opportunity provided by the Subcommittee to offer comments on this bill. We look forward to appearing before your Subcommittee should you so desire.

Sincerely,



Scott E. Thomas
Chairman

**A Comparison of Treasury Regulations Issued August 31, 1990, Implementing
the 1976 Lobby Law and Definitions of Lobbying Under H.R. 823/S. 349
"Lobbying Disclosure Act of 1993"**

Following is a comparison between definitions related to lobbying under Public Law 94-455 and regulations, and H.R. 823/S.349. The comparison is drawn from H.R. 823/S.349, the Internal Revenue Code, the IRS Regulations and related documents.

(Note: IN SOME INSTANCES, the definitions are only roughly analogous so comparisons are sometimes inexact.)

Treasury Regulations Implementing Section 1307 of PL-94-455 (From I.R.C. Sec. 4911)	Lobbying Disclosure Act of 1993
Influencing Legislation:	
1 A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and;	Lobbying activities include grass roots lobbying communications (as defined in regulations implementing section 4911(c)(3) of the Internal Revenue Code of 1986) to the extent that such activities are made in direct support of lobbying contacts. Sec 3 (8)
2 B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.	The term "lobbying activities" means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended for use in contacts, and coordination with the lobbying activities of others. Sec. 3(8)

Re: Lobbying Reform

Treasury Regulations Implementing Section 1307 of PL-94-455 (From I.R.C. Sec. 4911)	Lobbying Disclosure Act of 1993
Other Definitions and Special Rules.	
<p>3 Legislation. The term "legislation" includes action with respect to Acts, bills, resolutions, or similar items by the Congress; any State Legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.</p>	<p>The term "lobbying" contact" means any oral or written communication with a covered legislative or executive branch official made on behalf of a client with regard to—</p> <ul style="list-style-type: none"> (i) the formulation, modification, or adoption of Federal legislation (including legislative proposals); (ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy or position of the United States Government; or (iii) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license) except that it does not include communications that are made to officials serving in the Senior Executive Service or the uniformed services in the agency responsible for taking such action.
<p>4 Action. The term "action" is limited to the introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items.</p>	See 3 above.
Communications with members. --	
<p>(Direct Lobbying)</p> <p>5 A) A communication between an organization and any bona fide member of such organization to directly encourage such member to communicate with a legislator, etc., to influence legislation.</p>	Lobbying activities [which include] coordination with the lobbying activities of others. Sec 3(8)
<p>(Grass Roots Lobbying)</p> <p>6 B) A communication between an organization and any bona fide member of such organization to directly encourage such member to urge persons other than members to communicate with legislators is grass roots lobbying because it attempts to affect the opinions of the general public or a segment thereof.</p>	Lobbying activities include grass roots lobbying communications (as defined in regulations implementing section 4911(c)(3) of the Internal Revenue Code of 1986) to the extent that such activities are made in direct support of lobbying contacts. Sec 3(8)

Treasury Regulations Implementing Section 1307 of PL-94-455 (From I.R.C. Sec. 4911)	Lobbying Disclosure Act of 1993
Exceptions. --"influencing legislation" does not include--	
7 A) making available the results of nonpartisan analysis, study or research;	No exception for charities.
8 B) providing of technical advice or assistance (for such advice that would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be;	Disclosure not required.
9 C) appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organizations, its powers, and duties, tax-exempt status, or the deduction of contributions to the organizations;	No exception for charities.
10 D) communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than a communication between an organization and any bona fide member of such organization to directly encourage such member to communicate with a legislator as described in (B) above.	No exception for charities.
11 E) any communication with a government official or an employee, other than-- (i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or (ii) a communication the principal purpose of which is to influence legislation.	No exception for charities.
12 Affiliated Organizations. If for a taxable year two or more organizations described in Section 501(c)(3) are members of an affiliated group of organizations (as defined) then...(note: what follows at this point is a complex description when organizations are affiliated and should be treated as one entity).	The term "organization" means any corporation (excluding a Government corporation), company, foundation, association, labor organizations, firm, partnership, society, joint stock company, or group of organizations. (Emphasis added.)

RELIGIOUS ACTION CENTER OF REFORM JUDAISM

*File:
Lobbying Reform*

FAX COVER SHEET

DATE: 3/22

TO: Bruce Reed

FROM: David Saperstein

NUMBER OF PAGES INCLUDING COVER SHEET: 4

ANY QUESTIONS CALL (202) 387-2800

The Religious Action Center
pursues social justice and
religious liberty by
mobilizing the American
Jewish Community and
serving as its advocate
in the nation's capital

2027 Massachusetts Ave NW
Washington, DC 20036
(202) 387-2800

Harro Gilbert, Chairman
Commission on Social Action
of Reform Judaism

Albert Vorspan
Co-Director

Rabbi David Saperstein
Co-Director and Counsel

The Religious Action Center
is under the auspices of
the Commission on Social
Action of Reform Judaism,
a joint instrumentality of
the Central Conference of
American Rabbis and
the Union of American
Hebrew Congregations
with its affiliates:
American Conference
of Synagogues,
Association of Reform
Zionists of America,
National Federation of
Temple Brotherhoods,
National Federation of
Temple Sisterhoods,
North American Federation
of Temple Youth

RELIGIOUS ACTION CENTER OF REFORM JUDAISM

Bruce Reed FYI

March 22, 1993

To: Donsia Strong
From: David Saperstein
Re: Lobby Disclosure update for your Monday and Tuesday discussions
cc: Melanne Verveer, Bruce Reed, Frank Monahan, Oliver Thomas

It was a delight speaking with you Friday and it helped clarify some of the confusion on our side -- as I hope it did on yours as well. I spoke with Frank and Buzz and, as you and I agreed, we won't take the time at this point for a face-to-face meeting.

Let me, instead, respond in writing to some of the concerns that have been raised by various people with whom I have met or spoken with recently, including yourself, Michael Waldman, Melanne Verveer, and Senator Levin, with whom I also met on Friday.

The language in the Glickman letter I left in your office Friday spells out the general concern, and (with actual language) suggested solutions to, the religious community's unanimous belief that only a specific religious exemption in the Lobby Disclosure Act can protect our religious liberty interests.

Let me, however, add some more information which will be helpful for your deliberations.

The Religious Action Center pursues social justice and religious liberty by mobilizing the American Jewish Community and serving as its advocate in the nation's capital.

2027 Massachusetts Ave. NW
Washington, DC 20004
(202) 387-2800

Rabbi David Saperstein
Director and Counsel

Rabbi Lynne Landaberg
Associate Director

Evvy Lazer Shienaly
Chairperson
Commission on Social Action
of Reform Judaism

Rabbi Eric Yoffe
Director
Commission on Social Action
of Reform Judaism

The Religious Action Center is under the auspices of the Commission on Social Action of Reform Judaism, a joint instrumentality of the Central Conference of American Rabbis and the Union of American Hebrew Congregations with its affiliates: American Conference of Cantors, Association of Reform Zionists of America, National Federation of Temple Brotherhoods, National Federation of Temple Sisterhoods, North American Federation of Temple Youth.



A. The Process

1. Senator Levin agrees that religious groups should not fall under the act for constitutional reasons.
2. He is reticent, however, to give a specific legislative exemption for fear of sending a message that the religious exemption is not constitutionally mandated. He feels that by giving a legislative exemption federally, we send a message to the states that without a similar explicit exemption, religious groups would be assumed to be covered by similar legislation. This will be referred to in this memo as the "but for" problem.
3. He will not, however, stand in the way of the religious groups if we continue to feel so strongly about this issue. He does not wish to have a debate on the floor of the Senate on the exemption and therefore his preferred way of resolving this issue would be, if the House sponsors are so inclined, to have the exemption given in the House bill and the Senate accept it in a conference report.
4. The House sponsors seem to be sympathetic to such an approach. However, they want to be sure that the White House does not object.
5. In the meantime, I understand that Peter Levine has already told House staff -- and the Senator is willing to tell the House sponsors -- that the Senator does not object to the House including the exemption.

B. The Issues

1. The language for the exemption we are suggesting is tried and tested language from IRS provisions. It refers to ecclesiastical bodies. Such bodies do not include groups like the 700 Club or the Christian Coalition (which isn't even a 501(c)(3)). For example, Reverend Jerry Falwell's church would be included but not his Moral Majority -- if it still existed. If he used more than 5% of his church funds for advocacy purposes or any money for electoral purposes, it could lose its 501(c)(3) exemption. I can think of none of the religious rights advocacy or electoral organizations (or similar groups on the left for that matter) that would be protected by this exemption.
2. We know that we take some risk with the "but for" problem. The litigators for the national religious bodies, as well as the church-state experts affiliated with the religious organizations, are all unanimous that we will be far better off with the risks that giving us the exemption entail as opposed to the risks we face if there is no exemption. Believe me when I tell you that the last thing they want is to get their client into court more than absolutely necessary. They would not be pushing so hard if they didn't feel the exemption was the most protective means of preserving our religious liberty interests involved.
3. We believe that we can further mitigate the potential "but for" problem.

by referencing the First Amendment as the source of the exemption. How to do it is a drafting problem that you are far more skilled at than I but there are several obvious approaches:

Inserting a phrase like: "in consonance with the requirements of the First Amendment" could be used in the exemption language itself;

A reference to the bill being in consonance with the First Amendment's church-state requirements can be set out in the findings; and/or

a full explanation can be given in the Committee Report language.

Please keep in mind that the Supreme Court has recently given dramatically less weight to legislative history in its interpretation of Congressional legislation (which is why only citing the exemption in committee report language, as last year's bill did, gives us little protection). The state courts (and even other Federal courts) in general, continue to take legislative history seriously. Therefore, careful history giving the rationale of an explicitly stated exemption can deter state presumptions that religious groups are not constitutionally exempted from their disclosure bills.

4. The passage of RFRA will strengthen our case if we end up in Court but it will do nothing to mitigate the chances that some regulatory agency will try to bring us under the provisions of the act. The bill does nothing to shift presumptions about whether Congress intended religious groups to come under the lobby disclosure bill or not.
5. Let me emphasize: RFRA does not "solve" our problems. Over the past decade, the Supreme Court (and therefore many lower courts) have found "compelling interest" in an extraordinarily broad array of governmental activity and regulation. "Clean government" would certainly fall into that category for many courts as would "not exempting any groups from clean government regulation." Even if we were to win under RFRA, we do not want to embroil churches and synagogues in litigating this problem.
6. It is not likely that picking up the extra vote on White's replacement will change the outcome of a Supreme Court ruling on this issue. (Remember, Stevens, Kennedy, Scalia, and Rhenquist voted with the majority in Smith; Thomas would certainly join them; and O'Connor's concurrence is exactly the broad view of "compelling interest" that will jeopardize our position should it get to the High Court.) Since future replacements are likely to come from the liberal wing, there would be no gain on this particular issue in the foreseeable future.
7. Finally, just a reminder that the Independent Sector groups and the ACLU recognize the distinctive religious liberty issues in our concerns, and do not see it as a precedent for the other issues being raised by the charities.

RELIGIOUS ACTION CENTER OF REFORM JUDAISM

FAX COVER SHEET

DATE: 3/15
TO: Cathy Mays
FROM: Jon Parsh

NUMBER OF PAGES INCLUDING COVER SHEET: 2

ANY QUESTIONS CALL (202) 387-2800

The Religious Action Center
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Avroa Gilbar, Chairman
Commission on Social Action
of Reform Judaism

Albert Verman
Co-Director

Rabbi David Eisenstat
Co-Director and Chaplain

The Religious Action Center
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a joint endeavor of
the Central Conference of
American Rabbis and
the Union of American
Jewish Congregations
with its affiliate
American Conference
of Cantors,
Association of Reform
Councils of America,
National Federation of
Temple Sisterhoods,
National Federation of
Synagogue Musicans,
North American Federation
of Temple Youth.

Bruce

This guy called this morning.

Meet with him?

Yes

No

Someone else on DPC? _____

747 - ltr. to McFarley
cc to you

Donsia called him

RELIGIOUS ACTION CENTER OF REFORM JUDAISM

MEMORANDUM

TO: Bruce Reed
FR: David Saperstein
DA: 3/10/93

The Religious Action Center
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Washington, DC 20036
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Rabbi David Saperstein
Director and Counselor

Rabbi Lynn Landberg
Associate Director

Evay Lash Shikri
Chairperson
Commission on Social Action
of Reform Judaism

Rabbi Eric Yaffe
Director
Commission on Social Action
of Reform Judaism

The Religious Action Center
is under the auspices of
the Commission on Social
Action of Reform Judaism,
a joint instrumentality of
the Central Conference of
American Rabbis and
the Union of American
Hebrew Congregations
with its sister
American Conference
of Synagogues,
Association of Reform
Synagogues of America,
National Federation of
Temple Brotherhoods,
National Federation of
Temple Sisterhoods,
North American Federation
of Temple Youth.

I'd like to request a meeting with you as soon as possible to discuss two matters. The meeting would include Frank Monahan, the Director of Congressional Relations for the U.S. Catholic Conference, Buzz Thomas, Chief Council for the umbrella Baptist Joint Committee on Public Affairs, and Kay Dowhower, Director for the National Lutheran Office here, and currently the chair of the largest umbrella group of Catholic, Jewish, and Protestant representatives of national denominations and faith groups.

The first issue is the Lobby Disclosure Act. We have been in extensive conversations with the Congressional sponsors on the need for a religious exemption. (I have also spoken with Michael Waldman about it.) This has nothing to do with the Independent Sector request (they support us separately from their needs, but rather with major constitutional issues).

The second issue is the Religious Freedom Restoration Act. I assume you received my letter last week. This issue I also discussed briefly with Michael and with Mac McLarty.

On both of these issues, time is of the essence. I know that other people (Donsia and Michael) have pieces of this, but you remain a key person on these issues. We'd love to have the others join us as you see fit, but that is, of course, your decision.

We will take the meeting as soon as is convenient for you, and as many of us will make it as possible.

I look forward to speaking with you.



RELIGIOUS ACTION CENTER
OF REFORM JUDAISM

March 11, 1993

Mr. Thomas F. McLarty
The White House
1600 Pennsylvania Ave.
Washington, DC 20500

Dear Mr. McLarty:

*The Religious Action Center
pursues social justice and
religious liberty by
mobilizing the American
Jewish Community and
serving as its advocate
in the nation's capital*

2027 Massachusetts Ave., NW
Washington, DC 20036
(202) 387-2800

*Rabbi David Saperstein
Director and Counsel*

*Rabbi Lynne Landsberg
Associate Director*

*Evelyn Lasar Shlensky,
Chairperson
Commission on Social Action
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*Rabbi Eric Yoffie
Director
Commission on Social Action
of Reform Judaism*

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with its affiliates;
American Conference
of Cantors,
Association of Reform
Zionists of America,
National Federation of
Temple Brotherhoods,
National Federation of
Temple Sisterhoods,
North American Federation
of Temple Youth.*

It was a pleasure to meet with you this week. I wanted to follow-up on our brief conversation at the end of the meeting, when we discussed the possibility of having the signing of the Religious Freedom Restoration Act (RFRA) on Thomas Jefferson's 250th birthday, April 13th.

The President, a lifelong admirer of Mr. Jefferson (indeed, he bears his name), will certainly want to do something appropriate and dramatic to celebrate this milestone occasion.

Mr. Jefferson is one of the architects of America's religious freedom. There would be no more appropriate nor telling way of celebrating the occasion than to sign the Religious Freedom Restoration Act -- the most important religious freedom bill of our lifetimes.

Today, RFRA was introduced in Congress. With the U.S. Catholic Conference's endorsement of the bill, there is wall to wall support from American religious groups. Every religious group in America that I know of has endorsed this legislation! For two important constituencies passage of RFRA is the key domestic priority: the entire Jewish community and the entire fundamentalist community. (In a Washington Post interview immediately after the election, Richard Land, head of the Southern Baptist Convention's Christian Life Commission, was asked what the new President's first test of sensitivity to their concerns would be and responded: passage of RFRA.) This is an unprecedented opportunity to reach these two significant communities.

The President has endorsed RFRA. Janet Reno testified this week that "the President is anxious to have it on his desk." Senators Hatch and Kennedy are willing to bypass any hearings and ask Mr. Mitchell to move it expeditiously to the floor for a vote. House leadership is considering the same.

If the President asks Congress to act before their April recess, it can be done.



There is a catch, however. April 13th is the last day of Passover. It is a religious holiday for Orthodox and Conservative Jews (but not for Reform Jews, who finish the holiday the day before). It should not be done over their objection, for to deprive two major segments of the American religious community from participating in the signing of this bill because of religious observance would send a very troubling message.

There are several solutions. One is to have the signing the evening after the holiday is over, around 8:15. (I assume this would be bad for press coverage, and difficult logistically for the President). The second option is to do it the next day, or sometime that week (which suffers from missing the actual date of the birthday). We should remember that Saturday, April 17th is the third anniversary of the Smith decision. The third (and my recommendation) is to approach the two impacted groups and ask for approval of the signing, despite the fact they could not be present, offering them the following scenario:

At the signing, a few sentence excerpt of a letter written by the major Orthodox and Conservative organizations could be read, which would say to the President "Thank you for restoring our religious freedoms, and thank you for your willingness to postpone the signing ceremony because of the Jewish celebration of Passover today. We recognize, however, the powerful symbolism of the signing in conjunction with Jefferson's 250th Birthday. On this day when traditional Jews complete the celebration of our holiday of freedom, we encourage you to sign the Religious Freedom Restoration Act into the Law of the land.

On behalf of the coalition supporting RFRA, I have already begun quiet conversations about this last scenario, and feel there is a real chance this could be finessed, particularly if those around the President get involved personally.

I hope you like the idea of signing RFRA on Jefferson's 250th. Please let me know if you want to move ahead with this proposal.

Sincerely,



David Saperstein

cc:
Michael Waldman
Bruce Reed
Melanne Verveer
Donsia Strong
David Kusnet
Bernard Nussbaum
Sara Ehrman

THE WHITE HOUSE
OFFICE OF THE VICE PRESIDENT

FOR RELEASE: 2 p.m. (EST)
THURSDAY, February 4, 1993

Contact: Marla Romash
202-456-7034
301-585-9408 (H)

LOBBYING REFORM LAW GAINS ADMINISTRATION SUPPORT AT INTRODUCTION
Vice President Gore Joins Sponsors to Urge Congressional Action

WASHINGTON -- New legislation to strengthen and streamline lobbyists' disclosures gained a strong endorsement from President Clinton today (2/4) when Vice President Al Gore joined the bill's key sponsors, Sen. Carl Levin, D-MI; Rep. John Bryant, D-TX; and Sen. Bill Cohen, R-ME; and Rep. George Gekas, R-PA; at its introduction.

"This Congress and this Administration must speak in one voice to the American people and show them -- in word and in action -- that our work is to represent their interests: their families, their children, their jobs, their neighborhoods; and not the special interests. We're dedicating ourselves to changing the way government works, to put people first," the Vice President said.

The legislation mirrors proposals President Clinton and Vice President Gore offered during the campaign, calling for legislation to strengthen and streamline lobbying disclosure.

"The American people want change -- not just from their President but from all their elected officials. We have a responsibility to them -- to the people we represent -- to bring about real change, to restore confidence in our democracy, to make meaningful reforms in the way we do our political business," the Vice President said.

The Lobbying Disclosure Act introduced today (2/4) requires the registration of all professional lobbyists and broadens the definition of lobbying; streamlines lobbying disclosure requirements while increasing the amount of information available about lobbyists' clients; and substitutes fines for current criminal laws.

Vice President Gore said this bill reflects President Clinton's strong commitment to government reform, including campaign finance reform.

"Yesterday, we met with Congressional leaders to talk about moving forward with campaign finance reform. And, we met with workers at the budget office, and President Clinton made clear the marching orders he's giving his cabinet: tighten your belts.

(MORE)

do better with less, get rid of the wasteful perks and the useless commissions," the Vice President said.

"Already, President Clinton has instituted the toughest ethics standards any Administration has ever required. We have closed down the Competitiveness Council and shut the back door where special interests could come for special favors. And, we are moving to change the way government works -- to cut the bureaucracy and evict the special interests," he said.

"This bill speaks to our shared responsibility. It speaks to the kind of change and the kind of government we want to create to serve the people we represent. It is a pleasure for me to stand here today with my former colleagues and state as clearly as possible our strong support for this bill. We urge Congress to take action. The American people are waiting," the Vice President said.

#####

103^D CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. LEVIN (for himself, Mr. COHEN, Mr. GLENN, and Mr. ROTH) introduced
the following bill; which was read twice and referred to the Committee
on _____

A BILL

To provide for the disclosure of lobbying activities to
influence the Federal Government, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Lobbying Disclosure
5 Act of 1993".

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) responsible representative Government re-
9 quires public awareness of the efforts of paid lobby-
10 ists to influence the public decisionmaking process in

1 both the legislative and executive branches of the
2 Federal Government;

3 (2) existing lobbying disclosure statutes have
4 been ineffective because of unclear statutory lan-
5 guage, weak investigative and enforcement provi-
6 sions, and an absence of clear guidance as to who
7 is required to register and what they are required to
8 disclose; and

9 (3) the effective public disclosure of the identity
10 and extent of the efforts of paid lobbyists to influ-
11 ence Federal officials in the conduct of Government
12 actions will increase public confidence in the integ-
13 rity of Government.

14 (b) PURPOSE.—The purposes of this Act are to—

15 (1) provide for the disclosure of the efforts of
16 paid lobbyists to influence Federal legislative or ex-
17 ecutive branch officials in the conduct of Govern-
18 ment actions; and

19 (2) afford the fullest opportunity to the people
20 of the United States to exercise their constitutional
21 right to petition their Government for a redress of
22 grievances, to express their opinions freely to their
23 Government, and to provide information to their
24 Government.

1 **SEC. 3. DEFINITIONS.**

2 As used in this Act:

3 (1) The term "agency" has the same meaning
4 as such term is defined under section 551(1) of title
5 5, United States Code.

6 (2) The term "client" means any person who
7 employs or retains another person for financial or
8 other compensation to conduct lobbying activities on
9 its own behalf. An organization whose employees
10 conduct lobbying activities on its behalf is both a cli-
11 ent and an employer of the lobbyists. In the case of
12 a coalition or association that employs or retains
13 others to conduct lobbying activities on behalf of its
14 membership, the client is the coalition or association
15 and not its individual members.

16 (3) The term "covered executive branch offi-
17 cial" means—

18 (A) the President;

19 (B) the Vice President;

20 (C) any officer or employee of the Execu-
21 tive Office of the President other than a clerical
22 or secretarial employee;

23 (D) any officer or employee serving in an
24 Executive level I, II, III, IV, or V position, as
25 designated in statute or executive order;

1 (E) any officer or employee serving in a
2 Senior Executive Service position, as defined
3 under section 3232(a)(2) of title 5, United
4 States Code;

5 (F) any member of the uniformed services
6 whose pay grade is at or in excess of O-7 under
7 section 201 of title 37, United States Code; and

8 (G) any officer or employee serving in a
9 position of a confidential or policy-determining
10 character under Schedule C of the excepted
11 service pursuant to regulations implementing
12 section 2103 of title 5, United States Code.

13 (4) The term "covered legislative branch offi-
14 cial" means—

15 (A) a Member of Congress;

16 (B) an elected officer of Congress;

17 (C) any employee of a Member of the
18 House of Representatives, of a committee of the
19 House of Representatives, or on the leadership
20 staff of the House of Representatives, other
21 than a clerical or secretarial employee;

22 (D) any employee of a Senator, of a Sen-
23 ate Committee, or on the leadership staff of the
24 Senate, other than a clerical or secretarial em-
25 ployee; and

1 (E) any employee of a joint committee of
2 the Congress, other than a clerical or secretar-
3 ial employee.

4 (5) The term "Director" means the Director of
5 the Office of Lobbying Registration and Public Dis-
6 closure.

7 (6) The term "employee" means any individual
8 who is an officer, employee, partner, director, or pro-
9 prietor of an organization, but does not include—

10 (A) independent contractors or other
11 agents who are not regular employees; or

12 (B) volunteers who receive no financial or
13 other compensation from the organization for
14 their services.

15 (7) The term "foreign entity" means—

16 (A) a government of a foreign country or
17 a foreign political party (as such terms are de-
18 fined in section 1 (e) and (f) of the Foreign
19 Agents Registration Act of 1938 (22 U.S.C.
20 611 (e) and (f));

21 (B) a person outside the United States,
22 other than a United States citizen or an organi-
23 zation that is organized under the laws of the
24 United States or any State and has its principal
25 place of business in the United States; or

1 (C) a partnership, association, corporation,
2 organization, or other combination of persons
3 that is organized under the laws of or has its
4 principal place of business in a foreign country.

5 (8) The term "lobbying activities" means lobby-
6 ing contacts and efforts in support of such contacts,
7 including preparation and planning activities, re-
8 search and other background work that is intended
9 for use in contacts, and coordination with the lobby-
10 ing activities of others. Lobbying activities include
11 grass roots lobbying communications (as defined in
12 regulations implementing section 4911(e)(3) of the
13 Internal Revenue Code of 1986) to the extent that
14 such activities are made in direct support of lobby-
15 ing contacts.

16 (9)(A) The term "lobbying contact" means any
17 oral or written communication with a covered legisla-
18 tive or executive branch official made on behalf of a
19 client with regard to—

20 (i) the formulation, modification, or adop-
21 tion of Federal legislation (including legislative
22 proposals);

23 (ii) the formulation, modification, or adop-
24 tion of a Federal rule, regulation, Executive

1 order, or any other program, policy or position
2 of the United States Government; or

3 (iii) the administration or execution of a
4 Federal program or policy (including the nego-
5 tiation, award, or administration of a Federal
6 contract, grant, loan, permit, or license) except
7 that it does not include communications that
8 are made to officials serving in the Senior Exec-
9utive Service or the uniformed services in the
10 agency responsible for taking such action.

11 (B) The term shall not include communications
12 that are—

13 (i) made by public officials acting in their
14 official capacity;

15 (ii) made by representatives of a media or-
16 ganization who are primarily engaged in gather-
17 ing and disseminating news and information to
18 the public;

19 (iii) made in a speech, article or other pub-
20 lication, or through the media;

21 (iv) made on behalf of a foreign principal
22 and disclosed under the Foreign Agents Reg-
23 istration Act (22 U.S.C. 611 et seq.);

24 (v) requests for appointments, requests for
25 the status of a Federal action, or other similar

1 ministerial contacts, if there is no attempt to
2 influence covered legislative or executive branch
3 officials;

4 (vi) made in the course of participation in
5 an advisory committee subject to the Federal
6 Advisory Committee Act;

7 (vii) testimony given before a committee,
8 subcommittee, or office of Congress, or submit-
9 ted for inclusion in the public record of a hear-
10 ing conducted by such committee, subcommit-
11 tee, or office;

12 (viii) information provided in writing in re-
13 sponse to a specific written request from a Fed-
14 eral agency or a congressional committee, sub-
15 committee, or office;

16 (ix) required by subpoena, civil investiga-
17 tive demand, or otherwise compelled by statute,
18 regulation, or other action of Congress or a
19 Federal agency;

20 (x) made in response to a notice in the
21 Federal Register, Commerce Business Daily, or
22 other similar publication soliciting communica-
23 tions from the public and directed to the agency
24 official specifically designated in the notice to
25 receive such communications;

1 (xi) not possible to report without disclos-
2 ing information, the unauthorized disclosure of
3 which is prohibited by law;

4 (xii) made to agency officials with regard
5 to judicial proceedings, criminal or civil law en-
6 forcement inquiries, investigations or proceed-
7 ings, or filings required by statute or regula-
8 tion;

9 (xiii) made in compliance with written
10 agency procedures regarding an adjudication
11 conducted by the agency under section 554 of
12 title 5, United States Code, or substantially
13 similar provisions;

14 "(xiv) written comments filed in a public
15 docket and other communications that are
16 made on the record in a public proceeding; and

17 "(xv) made on behalf of an individual with
18 regard to such individual's benefits, employ-
19 ment, other personal matters involving only
20 that individual, or disclosures by that individual
21 pursuant to applicable whistleblower statutes.

22 (10) The term "lobbyist" means any individual
23 who is employed or retained by another for financial
24 or other compensation to perform services that in-
25 clude lobbying contacts, other than an individual

1 whose lobbying activities are only incidental to, and
2 are not a significant part of, the services provided by
3 such individual to the client.

4 (11) The term "organization" means any cor-
5 poration (excluding a Government corporation), com-
6 pany, foundation, association, labor organization,
7 firm, partnership, society, joint stock company, or
8 group of organizations. Such term shall not include
9 any Federal, State, or local unit of government
10 (other than a State college or university as described
11 under section 511(a)(2)(B) of the Internal Revenue
12 Code of 1986), organization of State or local elected
13 or appointed officials, any Indian tribe, any national
14 or State political party and any organizational unit
15 thereof, or any Federal, State, or local unit of any
16 foreign government.

17 (12) The term "public official" means any
18 elected or appointed official who is a regular em-
19 ployee of a Federal, State, or local unit of govern-
20 ment (other than a State college or university as de-
21 scribed under section 511(a)(2)(B) of the Internal
22 Revenue Code of 1986), an organization of State or
23 local elected or appointed officials, an Indian tribe,
24 a national or State political party or any organiza-

1 tional unit thereof, or a Federal, State, or local unit
2 of any foreign government.

3 **SEC. 4. REGISTRATION OF LOBBYISTS.**

4 (a) REGISTRATION.—(1) No later than 30 days after
5 a lobbyist first makes a lobbying contact or agrees to make
6 lobbying contacts, such lobbyist (or, as provided under
7 subsection (c)(2), the organization employing such lobby-
8 ist), shall register with the Office of Lobbying Registration
9 and Public Disclosure.

10 (2) Notwithstanding paragraph (1), any person
11 whose total income or total expenses in connection with
12 lobbying activities on behalf of a particular client do not
13 exceed, or are not expected to exceed, \$1,000 in a semi-
14 annual period is not required to register for such client.

15 (b) CONTENTS OF REGISTRATION.—Each registra-
16 tion under this section shall be in such form as the Direc-
17 tor shall prescribe by regulation and shall contain—

18 (1) the name, address, business telephone num-
19 ber and principal place of business of the registrant,
20 and a general description of its business or activi-
21 ties;

22 (2) the name, address, and principal place of
23 business of the registrant's client, and a general de-
24 scription of its business or activities (if different
25 from paragraph (1));

1 (3) the name of any organization, other than
2 the client, that—

3 (A) contributes more than \$5,000 toward
4 the lobbying activities in a semiannual period;

5 (B) significantly participates in the super-
6 vision or control of the lobbying activities; and

7 (C) has a direct financial interest in the
8 outcome of the lobbying activities;

9 (4) the name, principal place of business, and
10 approximate percentage of equitable ownership in
11 the client (if any) or any foreign entity that—

12 (A) holds at least 20 percent equitable
13 ownership in the client;

14 (B) directly or indirectly, in whole or in
15 major part, supervises, controls, directs, fi-
16 nances, or subsidizes the activities of the client;
17 or

18 (C) is an affiliate of the client that has a
19 direct interest in the outcome of the lobbying
20 activity;

21 (5) a statement of the general issue areas in
22 which the registrant expects to engage in lobbying
23 activities on behalf of the client and, to the extent
24 practicable, a list of specific issues that have already
25 been addressed or are likely to be addressed; and

1 (6) the name of each employee of the registrant
2 whom the registrant expects to act as a lobbyist on
3 behalf of the client and, if any such employee has
4 served as a covered legislative or executive branch
5 official in the 2 years prior to the date of the reg-
6 istration (or a report amending the registration) the
7 position in which such employee served.

8 (c) GUIDELINES FOR REGISTRATION.—(1) In the
9 case of a registrant representing more than one client, a
10 separate registration shall be filed for each client rep-
11 resented.

12 (2) Any organization that has one or more employees
13 who are lobbyists shall file a single registration for each
14 client on behalf of its employees who engage in lobbying
15 activities on behalf of such client.

16 **SEC. 5. REPORTS BY REGISTERED LOBBYISTS.**

17 (a) SEMIANNUAL REPORT.—No later than 30 days
18 after the end of the semiannual period beginning on the
19 first day of each January and the first day of July of each
20 year in which it is registered, each registrant shall file a
21 report with the Office of Lobbying Registration and Public
22 Disclosure on its lobbying activities during such semi-
23 annual period.

1 (b) CONTENTS OF REPORT.—Each semiannual re-
2 port filed under this section shall be in such form as the
3 Director shall prescribe by regulation and shall contain—

4 (1) the name of the registrant, the name of the
5 client, and any changes or updates to the informa-
6 tion provided in the initial registration;

7 (2) for each general issue area in which the reg-
8 istrant engaged in lobbying activities on behalf of
9 the client during the semiannual filing period—

10 (A) a list of the specific issues upon which
11 the registrant engaged in significant lobbying
12 activities, including a list of bill numbers and
13 references to specific regulatory actions, pro-
14 grams, projects, contracts, grants and loans, to
15 the maximum extent practicable;

16 (B) a statement of the Houses and Com-
17 mittees of Congress and the Federal agencies
18 contacted by lobbyists employed by the reg-
19 istrant on behalf of the client during the semi-
20 annual filing period;

21 (C) a list of the employees of the registrant
22 who acted as lobbyists on behalf of the client;
23 and

1 (D) a description of the interest in the
2 issue, if any, of any foreign entity identified
3 under section 4(b)(4);

4 (3) in the case of a registrant lobbying on be-
5 half of a client other than the registrant, a good
6 faith estimate of the total amount of all income from
7 the client (including any payments to the registrant
8 by any other person to lobby on behalf of the client)
9 during the semiannual period, other than income for
10 matters that are unrelated to lobbying activities; and

11 (4) in the case of a registrant lobbying on its
12 own behalf, a good faith estimate of the total ex-
13 penses that the organization and its employees in-
14 curred in connection with lobbying activities during
15 the semiannual filing period.

16 (c) ESTIMATES OF INCOME OR EXPENSES.—For the
17 purpose of this section, estimates of income or expenses
18 shall be made as follows:

19 (1) Income or expenses of \$200,000 or less
20 shall be estimated by the following categories:

21 (A) At least \$1,000 but not more than
22 \$10,000.

23 (B) More than \$10,000 but not more than
24 \$20,000.

1 (C) More than \$20,000 but not more than
2 \$50,000.

3 (D) More than \$50,000 but not more than
4 \$100,000.

5 (E) More than \$100,000 but not more
6 than \$200,000.

7 (2) Income or expenses in excess of \$200,000
8 shall be estimated and rounded to the nearest
9 \$100,000.

10 (3) Any registrant whose total income or total
11 expenses are less than \$1,000 in a semiannual pe-
12 riod (as estimated under subsection (b) (3) or (4),
13 or (c)(4), as applicable) is deemed to be inactive
14 during such period and may comply with the report-
15 ing requirements of this section by so notifying the
16 Director, in such form as the Director may pre-
17 scribe.

18 (4) In the case of registrants that are required
19 to report or identify lobbying income or expenses
20 under sections 6033 and 6104 of the Internal Reve-
21 nue Code of 1986, regulations developed under sec-
22 tion 6 shall provide that the amounts required to be
23 disclosed under such statutes, or a good faith esti-
24 mate of such amounts, may be reported (by category

1 of dollar value) to meet the requirements of sub-
2 section (b) (3) or (4) of this section.

3 (5) In estimating total income or expenses
4 under this section, a registrant is not required to
5 include—

6 (A) the value of contributed services for
7 which no payment is made; or

8 (B) the expenses for services provided by
9 an independent contractor or agent of the reg-
10 istrant who is separately registered under this
11 Act.

12 (d) CONTACTS WITH CONGRESSIONAL COMMIT-
13 TEES.—For purposes of subsection (b)(2), any contact
14 with a member of a congressional committee, an employee
15 of a congressional committee, or an employee of a member
16 of a congressional committee regarding a matter within
17 the jurisdiction of such committee is a contact with the
18 committee.

19 (e) EXTENSION FOR FILING.—The Director may
20 grant an extension of time of not more than 30 days for
21 the filing of any report under this section, on the request
22 of the registrant, for good cause shown.

1 **SEC. 6. ADMINISTRATIVE DUTIES OF THE OFFICE OF LOB-**
2 **BYING REGISTRATION AND PUBLIC DISCLO-**
3 **SURE.**

4 (a) **ESTABLISHMENT.**—(1) There is established with-
5 in the Department of Justice an Office of Lobbying Reg-
6 istration and Public Disclosure, which shall be headed by
7 a Director. The Director shall be appointed by the Presi-
8 dent, by and with the advice and consent of the Senate.
9 The Director shall be an individual who, by demonstrated
10 ability, background, training, and experience, is especially
11 qualified to carry out the functions of the position.

12 (2) Section 5316 of title 5, United States Code, is
13 amended by adding at the end thereof the following:

14 “Director of the Office of Lobbying Registra-
15 tion and Public Disclosure, Department of Justice.”.

16 (b) **DUTIES.**—The Director of the Office of Lobbying
17 Registration and Public Disclosure shall—

18 (1) after notice and an opportunity for public
19 comment, and consultation with the Secretary of the
20 Senate, the Clerk of the House, and the Administra-
21 tive Conference of the United States, prescribe such
22 rules, forms, penalty schedules, and procedural regu-
23 lations as are necessary for the implementation of
24 this Act;

25 (2) provide guidance and assistance on the reg-
26 istration and reporting requirements of this Act, in-

1 including, to the extent practicable, the issuance of
2 published decisions and advisory opinions;

3 (3) review and make such supplemental ver-
4 ifications or inquiries as are necessary to ensure the
5 completeness, accuracy, and timeliness of registra-
6 tions and reports;

7 (4) develop filing, coding, and cross-indexing
8 systems to carry out the purposes of this Act, in-
9 cluding computerized systems designed to minimize
10 the burden of filing and maximize public access to
11 materials filed under the Act;

12 (5) make copies of each registration and report
13 filed under this Act available to the public in elec-
14 tronic and hard copy formats as soon as practicable
15 after the date on which such registration or report
16 is received;

17 (6) preserve the originals or accurate reproduc-
18 tion of registrations until such time as they are ter-
19 minated, and of reports for a period of no less than
20 2 years from the date on which the report is
21 received;

22 (7) maintain a computer record of the informa-
23 tion contained in registrations and reports for no
24 less than 5 years after the date on which such reg-
25 istrations and reports are received;

1 (8) compile and summarize, with respect to
2 each semiannual period, the information contained
3 in registrations and reports filed during such period
4 in a manner which clearly presents the extent and
5 nature of expenditures on lobbying activities during
6 such period;

7 (9) make information compiled and summarized
8 under paragraph (8) available to the public in elec-
9 tronic and hard copy formats as soon as practicable
10 after the close of each semiannual filing period;

11 (10) provide copies of all registrations and re-
12 ports received under this Act and all compilations,
13 cross-indexes and summaries of such registrations
14 and reports to the Secretary of the Senate and the
15 Clerk of the House of Representatives by computer
16 telecommunication and other means as soon as prac-
17 ticable (but not later than 2 working days) after
18 such material is received or created; and

19 (11) transmit to the President and the Con-
20 gress an annual report describing the activities of
21 the Office and the implementation of this Act,
22 including—

23 (A) a financial statement for the preceding
24 year;

1 (B) a summary of the registrations and re-
2 ports filed with the Office in the preceding year;

3 (C) a summary of the registrations and re-
4 ports filed on behalf of foreign entities in the
5 preceding year; and

6 (D) recommendations for such legislative
7 or other action as the Director considers appro-
8 priate.

9 **SEC. 7. INFORMAL RESOLUTION OF ALLEGED NONCOMPLI-**
10 **ANCE.**

11 (a) ALLEGATION OF NONCOMPLIANCE.—Whenever
12 the Office of Lobbying Registration and Public Disclosure
13 has reason to believe that a person may be in noncompli-
14 ance with the requirements of this Act, the Director shall
15 notify the person in writing of the nature of the alleged
16 noncompliance and provide an opportunity for the person
17 to respond in writing to the allegation within 30 days or
18 such longer period as the Director may determine appro-
19 priate in the circumstances.

20 (b) INFORMAL RESOLUTION.—If the person responds
21 within 30 days or other time limit set by the Director,
22 the Director shall—

23 (1) take no further action, if the person pro-
24 vides adequate information or explanation to deter-
25 mine that it is unlikely that a noncompliance exists;

1 (2) treat the noncompliance as a minor non-
2 compliance and, if appropriate, assess a penalty
3 under section 8, if the person agrees that there was
4 a noncompliance and corrects such noncompliance;
5 or

6 (3) make a determination under section 8, if
7 the information or explanation provided indicates
8 that a noncompliance may exist.

9 (c) FORMAL REQUEST FOR INFORMATION.—If the
10 person fails to respond in writing within 30 days or other
11 time limit set by the Director, or the response is not ade-
12 quate to determine whether a noncompliance exists, the
13 Director may make a formal request for specific additional
14 information (subject to applicable privileges) that is rea-
15 sonably necessary for the Director to determine whether
16 the alleged noncompliance in fact exists. Each such re-
17 quest shall be structured in a way to minimize the burden
18 imposed, consistent with the need to determine whether
19 the person is in compliance, and shall—

20 (1) state the nature of the conduct constituting
21 the alleged noncompliance which is the basis for the
22 inquiry and the provision of law applicable thereto;

23 (2) describe the class or classes of documentary
24 material to be produced thereunder with such defi-

1 niteness and certainty as to permit such material to
2 be readily identified; and

3 (3) prescribe a return date or dates which pro-
4 vide a reasonable period of time within which the
5 material so requested may be assembled and made
6 available for inspection and copying or reproduction.

7 (d) NONDISCLOSURE OF INFORMATION.—Informa-
8 tion provided to the Director under this section shall not
9 be made available to the public without the consent of the
10 person providing the information, except that—

11 (1) any new or amended report or registration
12 filed in connection with an inquiry under this section
13 shall be made available to the public in the same
14 manner as any other registration or report filed
15 under sections 4 and 5; and

16 (2) written decisions issued by the Director
17 under sections 8 and 9 may be published after ap-
18 propriate redaction to ensure that confidential infor-
19 mation is not disclosed.

20 **SEC. 8. DETERMINATIONS OF NONCOMPLIANCE.**

21 (a) NOTIFICATION AND HEARING.—If the informa-
22 tion provided to the Director under section 7 indicates
23 that a noncompliance may exist, the Director shall—

24 (1) notify the person in writing of this finding
25 and, if appropriate, a proposed penalty assessment

1 and provide such person with an opportunity to re-
2 spond in writing within 30 days;

3 (2)(A) in the case of a minor noncompliance,
4 afford the person a 30-day period in which to re-
5 quest an oral hearing before an independent presid-
6 ing official; and

7 (B) grant such a request made during such pe-
8 riod for good cause shown; and

9 (3) in the case of a significant noncompliance,
10 afford the person an opportunity for a hearing on
11 the record under the provisions of section 556 of
12 title 5, United States Code, if requested by such per-
13 son within 30 days.

14 (b) DETERMINATION.—Upon the receipt of a written
15 response, the completion of a hearing, or the expiration
16 of 30 days, the Director shall review the information re-
17 ceived under this section and section 7 and make a final
18 determination whether there was a noncompliance and a
19 final determination of the penalty, if any. If no written
20 response or request for a hearing was received under this
21 section within the 30-day period provided, the determina-
22 tion and penalty assessment shall constitute a final and
23 nonappealable order.

1 (c) WRITTEN DECISION.—If the Director makes a
2 final determination that there was a noncompliance, the
3 Director shall issue a public written decision—

4 (1) requiring that the noncompliance be in-
5 cluded in a publicly available list of noncompliances,
6 to be reported to the Congress on a semiannual
7 basis;

8 (2) directing the person to correct the non-
9 compliance; and

10 (3) assessing a civil monetary penalty in an
11 amount determined as follows:

12 (A) In the case of a minor noncompliance,
13 the amount shall be no more than \$10,000, de-
14 pending on the nature and extent of the non-
15 compliance.

16 (B) In the case of a significant noncompli-
17 ance, the amount shall be more than \$10,000,
18 but no more than \$100,000, depending on the
19 nature and extent of the noncompliance.

20 (d) CIVIL INJUNCTIVE RELIEF.—If a person fails to
21 comply with a directive to correct a noncompliance under
22 subsection (c), the Director shall refer the case to the At-
23 torney General to seek civil injunctive relief.

24 (e) PENALTY ASSESSMENTS.—(1) No penalty shall
25 be assessed under this section unless the Director finds

1 that the person subject to the penalty knew or should have
2 known that such person was not in compliance with the
3 requirements of this Act. In determining the amount of
4 a penalty to be assessed, the Director shall take into ac-
5 count the totality of the circumstances, including the ex-
6 tent and gravity of the noncompliance and such other mat-
7 ters as justice may require. The Director shall not assess
8 a penalty in an amount greater than that recommended
9 by an administrative law judge after a hearing on the
10 record under subsection (a)(3) unless the Director deter-
11 mines that the recommendation of the administrative law
12 judge is arbitrary and capricious or an abuse of discretion.

13 (2) Regulations prescribed by the Director under sec-
14 tion 6 shall define minor and significant noncompliances.
15 Significant noncompliances shall be defined to include a
16 knowing failure to register and any other knowing non-
17 compliance that is extensive or repeated.

18 **SEC. 9. OTHER VIOLATIONS.**

19 (a) **LATE REGISTRATION OR FILING; FAILURE TO**
20 **PROVIDE INFORMATION.**—If a person registers or files
21 more than 30 days after a registration or filing is required
22 under this Act, or fails to provide information requested
23 by the Director under section 7(e), the Director shall—

24 (1) notify the person in writing of the non-
25 compliance and a proposed penalty assessment and

1 provide such person with an opportunity to respond
2 in writing within 30 days; and

3 (2)(A) afford the person a 30-day period in
4 which to request an oral hearing before an independ-
5 ent presiding official; and

6 (B) grant such a request made during such pe-
7 riod for good cause shown.

8 (b) DETERMINATION.—Unless the Director deter-
9 mines that the late filing or failure to provide information
10 was justified, the Director shall make a final determina-
11 tion of noncompliance and a final determination of the
12 penalty, if any. If no written response or request for a
13 hearing was received under this section within the 30-day
14 period provided, the determination and penalty assessment
15 shall constitute a final and unappealable order.

16 (c) WRITTEN DECISION.—If the Director makes a
17 final determination that there was a noncompliance, the
18 Director shall issue a public written decision—

19 (1) in the case of a late filing, assessing a civil
20 monetary penalty of \$200 for each week by which
21 the filing was late, with the total penalty not to ex-
22 ceed \$10,000; or

23 (2) in the case of a failure to provide
24 information—

1 (A) including the noncompliance in a pub-
2 licly available list of noncompliances, to be re-
3 ported to the Congress on a semiannual basis;
4 and

5 (B) assessing a civil monetary penalty in
6 an amount not to exceed \$10,000.

7 (d) CIVIL INJUNCTIVE RELIEF.—In addition to the
8 penalties provided in this section, the Director may refer
9 the noncompliance to the Attorney General to seek civil
10 injunctive relief.

11 **SEC. 10. JUDICIAL REVIEW.**

12 (a) FINAL DECISION.—A written decision issued by
13 the Director under section 8 or 9 shall become final 60
14 days after the date on which the Director provides notice
15 of the decision, unless such decision is appealed under sub-
16 section (b) of this section.

17 (b) APPEAL.—Any person adversely affected by a
18 written decision issued by the Director under section 8 or
19 9 may appeal such decision, except as provided under sec-
20 tions 8(b) or 9(b), to the appropriate United States court
21 of appeals. Such review may be obtained by filing a written
22 notice of appeal in such court no later than 60 days after
23 the date on which the Director provides notice of his deci-
24 sion and by simultaneously sending a copy of such notice
25 to the Director. The Director shall file in such court the

1 record upon which the decision was issued, as provided
2 under section 2112 of title 28, United States Code. The
3 findings of fact of the Director shall be conclusive, unless
4 found to be unsupported by substantial evidence, as pro-
5 vided under section 706(2)(E) of title 5, United States
6 Code. Any penalty assessed or other action taken in the
7 decision shall be stayed during the pendency of the appeal.

8 (c) RECOVERY OF PENALTY.—Any penalty assessed
9 in a written decision which has become final under this
10 Act may be recovered in a civil action brought by the At-
11 torney General in an appropriate United States district
12 court. In any such action, no matter that was raised or
13 that could have been raised before the Director or pursu-
14 ant to judicial review under subsection (b) may be raised
15 as a defense, and the determination of liability and the
16 determination of amounts of penalties and assessments
17 shall not be subject to review.

18 (d) ATTORNEYS' FEES.—In any appeal brought
19 under this section, in which the person who is the subject
20 of such action substantially prevails on the merits, the
21 court may assess against the United States attorneys' fees
22 and other litigation costs reasonably incurred in the ad-
23 ministrative proceeding and the appeal.

1 **SEC. 11. RULES OF CONSTRUCTION.**

2 (a) **PROHIBITION OF ACTIVITIES.**—Nothing in this
3 Act shall be construed to prohibit, or to authorize the Di-
4 rector or any court to prohibit, lobbying activities or lobby-
5 ing contacts by any person, regardless of whether such
6 person is in compliance with the requirements of this Act.

7 (b) **AUDIT AND INVESTIGATIONS.**—Nothing in this
8 Act shall be construed to grant general audit or investiga-
9 tive authority to the Director, or to authorize the Director
10 to review the files of a registrant, except in accordance
11 with the requirements of section 7 regarding the informal
12 resolution of alleged noncompliances and formal requests
13 for information.

14 **SEC. 12. AMENDMENTS TO THE FOREIGN AGENTS REG-**
15 **ISTRATION ACT.**

16 The Foreign Agents Registration Act of 1938 (22
17 U.S.C. 611 et seq.) is amended—

18 (1) in section 1—

19 (A) by amending subsection (b) to read as
20 follows:

21 “(b) The term ‘foreign principal’ means a government
22 of a foreign country or a foreign political party.”;

23 (B) by striking out subsection (j);

24 (C) in subsection (o), by striking out “the
25 dissemination of political propaganda and any
26 other activity which the person engaging therein

1 believes will, or which he intends to, prevail
2 upon, indoctrinate, convert, induce, persuade,
3 or in any other way influence” and inserting in
4 lieu thereof “any activity which the person en-
5 gaging in believes will, or which he intends to,
6 in any way influence”;

7 (D) in subsection (p) by striking out the
8 semicolon and inserting in lieu thereof a period;
9 and

10 (E) by striking out subsection (q);

11 (2) in section 3(g) (22 U.S.C. 613(g)), by strik-
12 ing out “established agency proceedings, whether
13 formal or informal.” and inserting in lieu thereof
14 “judicial proceedings, criminal or civil law enforce-
15 ment inquiries, investigations or proceedings, or
16 agency proceedings required by statute or regulation
17 to be conducted on the record.”;

18 (3) in section 4(a) (22 U.S.C. 614(a))—

19 (A) by striking out “political propaganda”
20 and inserting in lieu thereof “informational ma-
21 terials”; and

22 (B) by striking out “and a statement, duly
23 signed by or on behalf of such an agent, setting
24 forth full information as to the places, times
25 and extent of such transmittal”;

1 (4) in section 4(b) (22 U.S.C. 614(b))—

2 (A) by striking out “political propaganda”
3 and inserting in lieu thereof “informational ma-
4 terials”; and

5 (B) by striking out “(i) in the form of
6 prints or” and all that follows through the end
7 of the subsection and inserting in lieu thereof
8 “without placing in such informational mate-
9 rials a conspicuous statement that the materials
10 are distributed by the agent on behalf of the
11 foreign principal, and that additional informa-
12 tion is on file with the Department of Justice,
13 Washington, District of Columbia. The Attor-
14 ney General may by rule define what con-
15 stitutes a conspicuous statement for the pur-
16 poses of this section.”;

17 (5) in section 4(e) (22 U.S.C. 614(e)), by strik-
18 ing out “political propaganda” and inserting in lieu
19 thereof “informational materials”;

20 (6) in section 6 (22 U.S.C. 616)—

21 (A) in subsection (a), by striking out “and
22 all statements concerning the distribution of po-
23 litical propaganda”;

1 (B) in subsection (b), by striking out “,
2 and one copy of every item of political propa-
3 ganda”; and

4 (C) in subsection (c), by striking out “cop-
5 ies of political propaganda”;

6 (7) in section 8 (22 U.S.C. 618)—

7 (A) in subsection (a)(2), by striking out
8 “or in any statement under section 4(a) hereof
9 concerning the distribution of political propa-
10 ganda”; and

11 (B) by striking out subsection (d); and

12 (8) in section 11 (22 U.S.C. 621), by striking
13 out “, including the nature, sources, and content of
14 political propaganda disseminated or distributed.”.

15 **SEC. 13. AMENDMENTS TO THE BYRD AMENDMENT.**

16 Section 1352(b) of title 31, United States Code, is
17 amended—

18 (1) in paragraph (2), by striking out subpara-
19 graphs (A), (B), and (C) and inserting in lieu there-
20 of:

21 “(A) the name of any registrant under the
22 Lobbying Disclosure Act of 1992 who has made
23 lobbying contacts on behalf of the person with
24 respect to that Federal contract, grant, loan, or
25 cooperative agreement; and

1 “(B) a certification that the person making
2 the declaration has not made, and will not
3 make, any payment prohibited by subsection
4 (a).”;

5 (2) in paragraph (3), by striking out all that
6 follows “loan shall contain” and inserting in lieu
7 thereof “the name of any registrant under the Lob-
8 bying Disclosure Act of 1992 who has made lobbying
9 contacts on behalf of the person in connection with
10 that loan insurance or guarantee”; and

11 (3) by striking out paragraph (6) and redesignig-
12 nating paragraph (7) as paragraph (6).

13 **SEC. 14. REPEAL OF CERTAIN LOBBYING PROVISIONS.**

14 (a) **REPEAL OF THE FEDERAL REGULATION OF LOB-**
15 **BYING ACT.**—The Federal Regulation of Lobbying Act (2
16 U.S.C. 261 et seq.) is repealed.

17 (b) **REPEAL OF PROVISIONS RELATING TO HOUSING**
18 **LOBBYIST ACTIVITIES.**—(1) Section 13 of the Depart-
19 ment of Housing and Urban Development Act (42 U.S.C.
20 3537b) is repealed.

21 (2) Section 536(d) of the Housing Act of 1949 (42
22 U.S.C. 1490p(d)) is repealed.

23 (c) **REPEAL OF REGISTRATION REQUIREMENT RE-**
24 **LATING TO PUBLIC UTILITY LOBBYING ACTIVITIES.**—

1 Section 12(i) of the Public Utility Holding Company Act
2 of 1935 (15 U.S.C. 791(i)) is repealed.

3 **SEC. 15. CONFORMING AMENDMENTS TO OTHER STATUTES.**

4 (a) AMENDMENT TO COMPETITIVENESS POLICY
5 COUNCIL ACT.—Section 5206(e) of the Competitiveness
6 Policy Council Act (15 U.S.C. 4804(e)) is amended by in-
7 serting “or a lobbyist for a foreign entity, as defined in
8 section 3(7) of the Lobbying Disclosure Act of 1992” after
9 “an agent for a foreign principal”.

10 (b) AMENDMENT TO TITLE 18, UNITED STATES
11 CODE.—Section 219(a) of title 18, United States Code,
12 is amended by inserting “or a lobbyist required to register
13 in connection with the representation of a foreign entity,
14 as defined in section 3(7) of the Lobbying Disclosure Act
15 of 1992,” after “an agent of a foreign principal required
16 to register under the Foreign Agents Registration Act of
17 1938, as amended.”.

18 (c) AMENDMENT TO FOREIGN SERVICE ACT OF
19 1980.—Section 602(e) of the Foreign Service Act of 1980
20 (22 U.S.C. 4002(e)) is amended by inserting “or a lobby-
21 ist for a foreign entity (as defined in section 3(7) of the
22 Lobbying Disclosure Act of 1992)” after “an agent of a
23 foreign principal (as defined by section 1(b) of the Foreign
24 Agents Registration Act of 1938)”.

1 (d) AMENDMENT TO THE FEDERAL ELECTION CAM-
2 PAIGN ACT.—Section 319(b) of the Federal Election Cam-
3 paign Act (2 U.S.C. 441e(b)) is amended—

4 (1) in paragraph (1) by striking out “or” after
5 the semicolon;

6 (2) by redesignating paragraph (2) as para-
7 graph (3); and

8 (3) by inserting after paragraph (1) the follow-
9 ing:

10 “(2) a foreign entity, as such term is defined by
11 section 3(7) of the Lobbying Disclosure Act of 1992;
12 or”.

13 **SEC. 16. SEVERABILITY.**

14 If any provision of this Act, or the application there-
15 of, is held invalid, the validity of the remainder of this
16 Act and the application of such provision to other persons
17 and circumstances shall not be affected thereby.

18 **SEC. 17. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated such sums
20 as may be necessary to carry out this Act.

21 **SEC. 18. EFFECTIVE DATES.**

22 (a) IN GENERAL.—Except as otherwise provided in
23 this section, the provisions of this Act shall take effect
24 1 year after the date of the enactment of this Act.

1 (b) ESTABLISHMENT OF OFFICE.—The provisions of
2 sections 6 and 17 shall be effective on and after the date
3 of the enactment of this Act.

4 (c) REPEALS AND AMENDMENTS.—The repeals and
5 amendments made under sections 12, 13, and 14 of this
6 Act shall take effect as provided under subsection (a), ex-
7 cept that such repeals and amendments—

8 (1) shall not affect any proceeding or suit com-
9 menced before the date this Act takes effect, and in
10 all such proceedings or suits, proceedings shall be
11 had, appeals taken, and judgments rendered in the
12 same manner and with the same effect as if this Act
13 had not been enacted; and

14 (2) shall not affect the requirements of Federal
15 agencies to compile, publish, and retain information
16 filed or received before the effective date of such re-
17 peals and amendments.

18 (d) REGULATIONS.—Proposed regulations required
19 to implement this Act shall be published for public com-
20 ment no later than 270 days after the date of the enact-
21 ment of this Act.

Public Citizen



NEWS RELEASE

Contact: Nancy Watzman
Public Citizen's Congress Watch
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FOR IMMEDIATE RELEASE
February 4, 1993

STATEMENT BY PUBLIC CITIZEN On Introduction of Lobbying Disclosure Act of 1993

"Just finding out basic information about who is paying whom to lobby for what in Washington is impossible, what with confusing, overlapping laws now on the books," said Nancy Watzman, policy analyst for Public Citizen, a national consumer group founded by Ralph Nader.

"Yet it's the well-heeled Washington lobbyists who have incredible influence over legislation. Surely citizens have the right to know what they are up to -- whether they're representing an innocuously named coalition, funded by industry, working to weaken environmental laws, or securing some private perk for a wealthy client.

"If enacted, the Lobbying Disclosure Act of 1993 would go a long way toward making lobbying information available in a form easy enough for any citizen to use. If accompanied by substantive campaign finance reform, to cut down on the influence of money in elections, then citizens will truly be empowered to participate in their government.

"Vice President Gore and the Members of Congress here today should be commended for acting so quickly to improve the lobbying disclosure laws. Their actions send a strong message that the old backdoor way of doing business in Washington will no longer be tolerated."

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STATEMENT OF SENATOR CARL LEVIN
ON INTRODUCTION OF
THE LOBBYING DISCLOSURE ACT OF 1993
February 4, 1993

Mr. President, today I am pleased to introduce with the strong support of President Clinton and Vice President Gore and the bipartisan leadership of the Governmental Affairs Committee, the Lobbying Disclosure Act of 1993. This bill will close the loopholes in lobbying disclosure laws, for the first time cover lobbying of the Executive Branch, and create a reasonable enforcement program for addressing disclosure violations.

Mr. President, I am pleased to include as cosponsors of this bill, Senators Cohen, Glenn, Roth and Boren, and to announce that Congressman John Bryant, Chairman of the Judiciary Subcommittee in the House with jurisdiction over this legislation, will be introducing the same bill in the House of Representatives today. With this strong base of support we are hoping for very prompt consideration of this legislation and speedy passage. We approved the bill in the Governmental Affairs Committee last year.

With the election of a new President committed to political reform, we have our best chance in years to clean up one of Washington's oldest problems -- the patchwork of loopholes and exceptions that currently pass for lobbying disclosure laws.

We hear again and again that the American people have lost confidence in their elected officials. There is a widespread belief that government today is too susceptible to the influence of well-connected and well-heeled lobbyists. In one recent poll more than 70 percent of Americans said they believe that our government is controlled by special interests, rather than the public interest. Part of the "gridlock" so prevalent in Washington is attributed to special interests and their ability to block needed legislation.

Lobbying -- that is, seeking to influence legislation and government policy -- is not bad. Far from it. It is a vital part of our participatory democracy. We deal every day with lobbyists for cities, counties, and states; lobbyists for public hospitals and private relief groups; lobbyists for police organizations and lobbyists for the Girl Scouts. Some lobbyists try to protect the jobs and benefits of our workers; others seek to improve the competitiveness of our industry. Some lobbyists work to keep our streets safe; some want to keep our air and water clean; others seek to reduce taxes.

The fact that we cannot and would not want to ban lobbying does not mean that general information about paid lobbying activities shouldn't be disclosed. Effective public disclosure of lobbying activities can ensure that the public, Federal officials, and other interested parties are aware of the pressures that are brought to bear on public policy by paid lobbyists. Such public awareness should inform the public of the broad array of lobbying efforts on all sides of an issue. In some cases, it may alert other interested parties of the need to provide their own views to decision-makers. It also may encourage lobbyists and their

clients to be sensitive to even the appearance of improper influence.

One of the reasons why the public is suspicious and distrustful of the relationship between lobbyists and government officials is the cloak of secrecy that currently covers too many lobbyists and their activities.

Over the last two years, the Subcommittee on Oversight of Government Management, which I chair, has held a series of hearings on the lobbying disclosure laws. We learned that:

- o Fewer than 4,000 of the 13,500 individuals and organizations listed in the book Washington Representatives were registered as lobbyists. Three-quarters of the unregistered representatives interviewed by the GAO said that they contact Members of Congress and their staffs, deal with federal legislation, and seek to influence actions of either Congress or the executive branch.
- o Only 825 persons were registered as active "foreign agents" --i.e., persons employed to conduct political activities on behalf of a foreign principal -- under the Foreign Agents Registration Act. In one case examined by the Subcommittee, we found that 42 of 48 lobbyists for foreign manufacturers and their domestic subsidiaries were not registered under FARA.
- o Lobbyists who do register disclose expenditures as trivial as \$27 lunch bills, \$45 phone bills, \$6 cab fares, and \$16 messenger fees. One lobbyist even disclosed quarterly lobbying payments of \$1.31 to one of its employees. Because of the way these costs are calculated, however, it is impossible to reach any accurate conclusion as to total lobbying expenditures.

Under existing statutes, there is no disclosure requirement when White House and other executive branch officials are lobbied, no disclosure when congressional staffers are lobbied, and only sporadic disclosure of lobbying by lawyers. These laws have been characterized by the Justice Department as "ineffective, inadequate and unenforceable" -- which may explain why there doesn't appear to have been a single attempt to enforce them for almost 40 years.

The Lobbying Disclosure Act of 1993, which I am introducing today, would address these problems. This bill has been thoroughly examined through extensive hearings and Committee consideration in the last Congress. It was reported last year by the Governmental Affairs Committee, but time ran out before it could be considered by the full Senate.

If enacted, the Lobbying Disclosure Act would replace existing lobbying disclosure laws with a single, uniform statute,

covering the paid lobbying of Congress and the executive branch on behalf of both domestic and foreign persons. The new statute would replace the Federal Regulation of Lobbying Act; the disclosure requirements of the so-called Byrd Amendment; the provisions of the Foreign Agents Registration Act (FARA) which apply to private persons and companies; and the HUD disclosure statutes. The provisions of the Byrd Amendment prohibiting lobbying with appropriated funds would be left intact, as would the FARA provisions applicable to representatives of foreign governments and political parties.

The bill has three essential features: it would broaden the coverage of existing disclosure statutes to ensure that all professional lobbyists are registered; streamline disclosure requirements to make sure that only meaningful information is disclosed and needless burdens are avoided; and create a new, more effective and equitable system for administering and enforcing these requirements.

On the first point, the bill would require registration of all professional lobbyists -- i.e., anyone who is paid to make lobbying contacts with either the legislative or the executive branch of the Federal government. People who are paid less than \$1,000 to lobby, or whose lobbying activities are only incidental to, and not a significant part of, their jobs would not be covered.

The bill would define lobbying contacts to include communications with Members of Congress and their staff, officers and employees in the Executive Office of the President, and ranking officials in other federal agencies. Activities that don't constitute lobbying -- such as communications by public officials and media organizations; requests for appointments or for the status of an action and other ministerial communications; communications with regard to ongoing judicial or law enforcement proceedings; testimony before congressional committees and public meetings; participation in agency adjudicatory proceedings; the filing of written comments in rulemaking proceedings; and routine negotiations of contracts, grants, loans, and other federal assistance -- would be exempt from coverage.

On the second point, the bill would significantly streamline lobbying disclosure requirements by consolidating filing in a single form and a single location ("one-stop shopping"); replacing quarterly reports with semi-annual reports; and authorizing the development of computer-filing systems and simplified forms. The bill would require a single registration by each organization whose employees lobby, instead of separate registrations by each employee-lobbyist. The names of the employee-lobbyists (and any ranking legislative or executive branch position in which they served in the previous 2 years) would simply be listed in the employer's registration forms.

In addition, the bill would simplify reporting of receipts and expenditures by substituting estimates of total receipts or expenditures (by category of dollar value) for the current requirement to provide a detailed accounting of all receipts and expenditures. This reporting would be more meaningful than the current system, because the types of receipts and expenditures to be disclosed would be more broadly defined. The bill would also replace the requirement of FARA and the Byrd Amendment to list each official contacted with a simpler requirement to identify the executive branch agencies, and the Houses and Committees of Congress, that were contacted.

At the same time, the bill would close a loophole in existing law by requiring the disclosure of the identity of coalition members who are, in effect, clients -- in that they contribute substantially (more than \$5,000 in a semi-annual period) to the coalition, help supervise its lobbying activities, and are likely to benefit directly if the coalition's lobbying efforts are successful. The bill would also enhance the effectiveness of public disclosure by requiring the disclosure of any foreign entity which supervises, directs, or controls the client, or which has a direct interest in the outcome of the lobbying activity. Any foreign entity with a 20% equitable ownership of a client would have to be disclosed.

Finally, the bill would improve the administration of the lobbying disclosure laws by creating a new Office of Lobbying Registration and Public Disclosure within the Justice Department to administer the statute; requiring the issuance of new rules, forms, and procedural regulations after notice and an opportunity for public comment; making guidance and assistance (including published advisory opinions) available to the public for the first time; authorizing the creation of computer systems to enhance public access to filed materials; avoiding intrusive audits or inspections through an informal dispute resolution process; and substituting a system of administrative fines (subject to judicial review) for the existing criminal penalties for non-compliance.

Our new President has promised to push for and sign legislation to toughen and streamline lobbying disclosure. It is time for Congress to get behind the President on this important issue. The bill that Senators Cohen, Glenn, Roth, Boren and I are introducing today would take a huge step in the right direction -- the direction of government in the sunshine, the direction of public disclosure and accountability -- without impinging on First Amendment rights. I hope that my colleagues will join me in supporting this bill and enacting this bill into law.

PETER LEVINE 2/1/93.

③ Both strong laws - some diff.

1 pm Wed.
w/AGJ

~~③~~ Only 400 lobbyists in Ark.

Don't disclose issues or who's contacted

① FEC link OK

② System in place when the lobbying + campaign contribs. connections will be available

Are strengthening and:

① Separate category for gifts + entertainment

② Any lobbyist who appears before comm. needs to disclose

③ Poss. separate category for grassroots lobbying

④

GORE LIKELY FOR WED

Wright Andrews, Nunn = lobbyist

LEVIN

- Considering gifts rule same as Admin.

- Publish cross tabs every 6 mos. or so

- will look at separate category for gifts

Common Cause

2030 M STREET, NW • WASHINGTON, D.C. 20036-3380 • PHONE: (202) 833-1200 • FAX: (202) 659-3716

EDWARD S. CARMY
Chairman

FRED WERTMEDIER
President

ARCHIBALD COX
Chairman Emeritus

JOHN W. GARDNER
Founding Chairman

February 24, 1993

Dear Senator:

Common Cause believes that S. 349, the Lobbying Disclosure Act of 1993, fails to require basic disclosure about the way lobbyists do business in Washington and should not be passed by the Senate in its current form.

Specifically, we believe it is essential for registered lobbyists and lobbying organizations to publicly itemize on a Member-by-Member basis the various financial favors and benefits provided to Members of Congress and their staffs.

A central theme of the 1992 election involved changing the way business is done in Washington. The overriding issue in bringing about this change is to enact real campaign finance reform, and Congress should act promptly to pass such legislation.

In addition to campaign contributions, there are a number of other ways that lobbyists provide financial favors and benefits to Members of Congress, including free trips, meals, gifts, entertainment (such as tickets to the Super Bowl and Broadway shows), and contributions in the names of Members to their favorite causes or to private foundations they control. Lobbyists also sponsor events and receptions for individual Members, such as those that took place at the national conventions last year and during the inauguration, and host ski trips and golf and tennis tournaments for Members.

Under existing congressional rules, lobbyists are able to spend unlimited amounts to buy unlimited numbers of meals for Members of Congress in Washington restaurants, and there is no public disclosure of these expenditures. Other gifts are limited to \$250 per year per individual giver, but gifts of up to \$100 are not counted against the \$250 limit and again there is no public disclosure of any information regarding these gifts.

Restrictions on meals and gifts for executive branch officials are far more stringent. Gifts or meals from lobbyists or others for executive branch officials are

limited to \$20 per occasion and an aggregate of \$50 per year from any single source, with all amounts counting toward the \$50 limit.

Common Cause believes that lobbyists should be generally prohibited from providing financial favors and benefits to Members of Congress and their staffs. Such prohibitions already exist in states such as South Carolina and Wisconsin.

We further believe that, as long as Congress allows lobbyists to provide financial favors and benefits to Members of Congress, the public has a right to know on a timely basis what financial favors and benefits are being provided by which lobbyists to which Members of Congress. In order for this information to be timely, the disclosure of financial favors and benefits from lobbyists to Members should be filed quarterly.

The public availability of information about financial favors and benefits from lobbyists goes to the heart of lobby disclosure and is already required in some states.

For example, President Clinton recognized the public's right to know this kind of information by leading a successful fight in Arkansas for a lobby disclosure law that requires itemized disclosure of financial benefits provided to public officials by lobbyists. Specifically, the Arkansas law requires a registered lobbyist to publicly disclose a description and the amount of the financial benefit provided -- including gifts, payments, loans, meals and lodging -- and the public official to whom the benefit was given.

When the Arkansas legislature tried to pass a weak lobby disclosure bill in 1988 that did not include this kind of itemized disclosure, then-Governor Clinton rejected the legislation and, instead, took the issue to the public through a successful citizens' initiative. On the day the initiative was passed by the voters, Clinton told the *Arkansas Democrat*, "It looks like we've beat them [opponents of strong lobby reform] and if we have, I'll be a happy fellow. ...I first proposed a lobbyist disclosure bill in 1979 so I'm happy to finally get it. This has been my issue for a long time."

In testimony on lobby disclosure before the Senate Governmental Affairs Committee last year, Common Cause stated our view that there was one very important component of lobbying that needed to be reported separately and itemized on a Member-by-Member basis -- financial benefits provided to Members by lobbyists. Citizens should be able to examine a registered lobbyist's disclosure report and see a complete picture of the financial favors and benefits a lobbyist is providing

3

to Individual Members of Congress as the lobbyist attempts to influence congressional decisions.

We strongly urge you not to support the passage of S. 349 in its current form and to vote to strengthen it by requiring itemized disclosure of financial benefits provided to Members and their staffs by lobbyists.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Wertheimer", with a long horizontal flourish extending to the right.

Fred Wertheimer
President

MEMORANDUM

TO: Melanne Verveer, Michael Waldman, Donsia Strong
FROM: Peter Levine
DATE: March 12, 1993
RE: The Lobbying Disclosure Act

Attached are the two memos that you requested at our meeting on Wednesday evening. The first memo addresses the issues raised by the 501(c)(3)'s; the second addresses the gifts issue raised by Common Cause.

If you have any questions about these memos, please call Linda Gustitus or Peter Levine at 224-3682.

Donsia -

3/12
Could you get copies to
Melanne, Michael, and Bruce Reed
for me?

Thanks -
Peter

3/12/93

Response to Concerns Expressed by 501(c)(3)'s
About the Lobbying Disclosure Act of 1993

There are three basic elements of the Lobbying Disclosure Act: the coverage of the Act, the disclosure requirements, and the mechanisms for administration and enforcement. Independent Sector, the Alliance for Justice, and other 501(c)(3)'s have raised concerns about each of these elements.

The following memorandum outlines the 501(c)(3)'s basic concerns in each of these areas, what has been done to address these concerns, and what additional steps can be taken.

A. The Coverage of the Act

1. The issue. Some 501(c)(3)'s have made the argument that they should not be required to register as lobbyists at all. Others have expressed concern that small organizations that currently engage in only minimal lobbying may either be required to register or deterred from lobbying because they are afraid they would have to register.

2. What has been done. Excluding 501(c)(3)'s from the coverage of the bill is not a viable option. One of the primary objectives of the bill is to create a level playing field, and treat all lobbyists equitably, regardless of whom they may represent. However, the bill does contain two separate de minimis standards.

Under the first de minimis test, any individual whose lobbying activities "are only incidental to, and are not a significant part of" the services provided to the client, is not a lobbyist at all. This test is intended to limit the bill's coverage to professional lobbyists. Last year's report contains a series of examples of how this exception is intended to apply. For example, the report specifically states that:

"A member of the regional affiliate of a national organization who comes to Washington once a year to meet with his or her Congressman and others as a part of a "week in Washington" program, would not be required to register, because this activity would not constitute a significant part of the person's overall job responsibilities. * * *

"The Director of a local charity with no Washington office, who comes to Washington for a few days to lobby on a single issue (but does not engage in other lobbying activities) would not be required to register, because that activity would not constitute a regular or significant part of the person's overall job responsibilities."

Under the second de minimis test, an organization that hires a professional lobbyist, but spends less than \$1,000 on lobbying activities in a semi-annual period is not required to register.

3. What else can be done. The 501(c)(3)'s are not satisfied with the de minimis tests in the bill, because -- (a) they believe that the \$1,000 threshold is too low; and (b) the "insignificant and incidental" test does not provide a sufficiently bright line to give them comfort. Additional steps can be taken to address each of these concerns. However, any steps we take cannot be limited to 501(c)(3)'s -- they must apply equally to all types of organizations.

a. The threshold. We could help 501(c)(3)'s and other small organizations by addressing the threshold issue. One option would be to simply raise the threshold. That would be tricky, however, because we don't want to exclude a lobbying firm that is hired by a client to engage in significant lobbying for a short period of time.

We think that a preferable approach would be to adopt a dual threshold, in recognition of the fact that the burden of registering the first time and coming within the coverage of the bill is greater than the incremental burden of registering for an additional client, if you are already registered for others. Under this approach --

- o an organization would not have to register for a particular client if its receipts or expenditures for that client were under \$1,000 for a semi-annual period; and
- o an organization would not have to register for any client if its receipts or expenditures for all clients were under \$5,000 for a semi-annual period.

This approach would raise the effective threshold for all small organizations to \$5,000 for a semi-annual period, without giving any special treatment to 501(c)(3)'s. Our research shows that fewer than eight hundred 501(c)(3)'s (out of more than a hundred thousand nation-wide) report more than \$10,000 in annual lobbying expenditures to the IRS (although this may not be the entire universe of 501(c)(3)'s making such expenditures).

b. The "incidental and insignificant" test. We could also help 501(c)(3)'s by drawing a brighter line as to when lobbying activities are "incidental and insignificant". Independent Sector has suggested that if lobbying activities are less than 10% of what a person does for his or her client, that person should not be required to register.

We agree. This bill is not intended to require registration by everybody who ever contacts Congress. It is intended to require the registration of paid, professional lobbyists. We believe that the 10% test would provide a good measure of whether lobbying is a regular part of a person's job, making that person a professional lobbyist.

However, we would prefer to adopt the 10% test in our Committee report, rather than in a floor amendment. The problem with putting a 10% test in the bill itself is that statutory language may be too subject to rigid interpretation and enforcement. We do not want the 10% standard to be interpreted in such a rigid way that it requires people to track all of their time, to prove that they are not lobbyists. By keeping the subjective standard in the bill and adopting the bright line test in report language, we think we can avoid this unnecessary extreme.

B. The Disclosure Requirements

1. The issue. The 501(c)(3) are in a unique position, because they already have to disclose certain lobbying costs to the IRS, on the form 990. The IRS definition of lobbying pertains to efforts to influence legislation (whether through contacts with the legislative branch or the executive branch, or through grass roots communications). It does not include efforts to influence rules, regulations, policy decisions, or the decision to award contracts, grants, and loans, as does our bill.

Some 501(c)(3)'s believe that they should not be required to disclose anything beyond the dollar amounts already disclosed on the IRS form 990. Others argue that they should be allowed to use the IRS definition of lobbying, in lieu of the broader definition in our bill, when they make their disclosures under the Lobbying Disclosure Act.

2. What has been done. The bill already accords 501(c)(3)'s special treatment, in recognition of the burden imposed on them by the requirement to disclose lobbying costs to the IRS. Rather than require 501(c)(3)'s to track lobbying costs under two separate definitions, the bill allows them to disclose the same amounts that they disclose to the IRS for the purpose of the Lobbying Disclosure Act. Consequently, there is no requirement for 501(c)(3)'s to create two separate accounting systems or to keep two separate sets of books on lobbying costs.

In addition, the streamlined disclosure requirements of the bill minimize the burden of compliance. Since we don't require 501(c)(3)'s to do any accounting they aren't already doing for the IRS, the only new information they would be required to disclose is --

- o a list specific issues on which they engaged in significant lobbying activities;
- o a list of executive branch agencies and congressional committees contacted by their lobbyists; and
- o the names of their lobbyists.

This isn't a huge paperwork requirement, and it shouldn't be the kind of form it takes a squadron of lawyers to fill out.

3. What else can be done. The proposal of the 501(c)(3)'s that they be exempted from the disclosure requirements of this bill, or be allowed to use a narrower definition of lobbying for the purpose of their disclosures, is not acceptable.

We cannot use one definition for 501(c)(3)'s and another for everybody else. It would not be fair to say that X Corporation has to disclose its efforts to lobby for a contract, but Y Charity does not have to disclose its efforts to lobby for a grant. It would not be fair to say that X Corporation has to disclose when it lobbies on one side of a regulatory or licensing issue, but Y Interest Group does not have to disclose when it lobbies on the opposite side of the same issue.

The only additional step we can take in this area is to address the de minimis test, as described above. By excluding small organizations that engage in only minimal lobbying from the coverage of the bill, we can ensure that even the streamlined disclosure requirements imposed by the bill will be faced only by the larger 501(c)(3)'s.

C. Administration and Enforcement

1. The issue. Some representatives of 501(c)(3)'s have expressed concern that the enforcement provisions of the bill could chill the exercise of first amendment rights. The concern is that groups who lobby for disfavored causes could be harassed, or tied up in lengthy and expensive litigation.

2. What has been done. While one of the objectives of the Lobbying Disclosure Act is to create a registration system that is more than voluntary, the bill places clear limits on the enforcement authority of the Office of Lobbying Registration.

Unlike lobbying disclosure bills introduced in the late 70's (and the Foreign Agents Registration Act), the Lobbying Disclosure Act does not authorize audits or inspections of the files of registrants. In fact, the bill expressly prohibits such audits or inspections.

The only avenue for enforcement provided in the bill starts with an informal dispute resolution process: if the Office has reason to believe that a person is not in compliance with the statute, it must notify the person in writing and provide the person with an opportunity to respond to the allegation. If the explanation is adequate, the case is closed. If a non-compliance is admitted and corrected, the case is closed.¹

Only if the non-compliance is denied, and the information or explanation provided is inadequate to determine whether the statute was violated, is the Office authorized to make a legally binding request for additional information. The bill expressly limits any such request to information that is reasonably necessary to determine whether the alleged noncompliance in fact exists, and requires that all requests be structured in a way to minimize the burden imposed. This is anything but a broad authorization to go fishing for possible violations.

If the case proceeds to a hearing, due process protections are invoked. In determining the amount of a penalty to be assessed, the Office is required to take into account the totality of the circumstances, including the extent of the noncompliance and such other matters as justice may require. The bill expressly prohibits the imposition of any penalty without an express finding that the person knew or should have known of the violation. And judicial review is available for any determination of noncompliance or penalty assessment.

Last June, the ACLU sent us a letter stating that the bill "on the whole achieves reform in a manner that is sensitive to civil liberties." The Bush Justice Department, by contrast, criticized the bill for the constraints it would place on its enforcement powers. The Justice Department letter stated:

¹An amendment adopted in the Senate mark-up expressly precludes any penalty for a minor non-compliance that is admitted and corrected; even a significant (i.e., knowing, extensive, and repeated) violation is subject to a maximum penalty of \$10,000 if it is admitted and corrected.

"We note that S. 2766, like its predecessor S. 2279, establishes an elaborate and somewhat redundant set of procedures which significantly restrict and delay resolution of disputes under the Act. . . . The Department believes that enforcement would be enhanced by deleting the mandatory informal resolution determination and noncompliance mechanism in sections 7 and 8 and the Administrative Procedures Act hearing provisions of the bill, and by adding civil investigative demand authority.

"The bill should allow the Director, Office of Lobbying Registration and Public Disclosure to investigate more effectively and inspect records. Thus, we recommend deleting section 11's prohibition against any adequate audit or inspection authority. Further, the Department opposes the 'exhaustion of administrative enforcement mechanism' approach in the bill as an unwarranted restriction on its litigating authority and discretion."

Because we did not accede to any of these demands, we believe that the enforcement mechanisms of the bill remain sensitive to the need to avoid undue burdens on the exercise of first amendment rights and preclude abusive enforcement practices.

3. What else can be done. Independent Sector argues that "assigning responsibility for oversight of a constitutionally protected activity to a law enforcement agency is without precedent, and would create serious risk of inappropriate regulation and restriction of lobbying activities." They and others in the 501(c)(3) community have asked that we move this function out of the Justice Department and place it somewhere else -- whether at the Office of Government Ethics or the Federal Election Commission.

We believe we have already structured the enforcement mechanisms in the bill to provide maximum protection for first amendment rights. We are considering a few additional fine-tuning suggestions, including the following --

- o Clarify that formal requests for information must be limited to requests for documentary information;
- o Prohibit penalties for a refusal to provide information when the refusal is the result of a good faith dispute over the validity or appropriate scope of the request;
- o Clarify that informal hearings (for minor violations) include the opportunity to present evidence; and

- o Limit the period in which the Office can initiate an inquiry to 3 years after the date of the alleged noncompliance.

With all these protections built into the bill, we don't see any significant potential for abusive enforcement practices, regardless of which agency is responsible. Having already moved the enforcement responsibility from OGE to Justice (at the request of OGE and the ranking Republican on the Subcommittee), we don't really want to move it again.

3/12/93

Response to Gift Disclosure Issue
and the Lobbying Disclosure Act of 1993

Common Cause has attacked the Lobbying Disclosure Act of 1993, arguing that it is inadequate because it doesn't require lobbyists to itemize the "financial benefits" they provide to Members of Congress and their staffs. The New York Times has seconded this criticism in a series of harsh editorials.

There is no question that the current congressional gift rules are inadequate and should be changed. However, there are a number of problems with the Common Cause approach of requiring disclosure of gifts by lobbyists. These include the following:

1. Selective Coverage. Requiring lobbyists to disclose gifts would impose additional burdens on the registration system, but would not solve the gift problem. This approach would set up a huge loophole, subjecting Congress to more criticism, because gifts can be given not only by lobbyists, but also by other people with an interest in legislation. In view of this loophole, any significant gift which is permissible under the congressional gift rules could probably be given without disclosure. For example --

- o If a lawyer-lobbyist invites a federal official to dinner, that would presumably have to be disclosed under the Common Cause approach. But if a partner in the same law firm -- who is not a lobbyist -- invites the same official to dinner, it would not have to be disclosed. This would be true even if the same people attended the dinner, ate the same food, and had the same conversation.
- o If a lobbying firm were registered under the Act and paid for a reception for a federal official, that would presumably have to be disclosed. But if one of the firm's clients -- which was not registered -- were to pay for the reception instead, it would not have to be disclosed. Again, this would be true even if the same guests were present and had the same discussions.

Worse, this selective disclosure system would give people an incentive not to register as lobbyists, so as to fit into the loophole on gift disclosure. In other words, we could undermine effective lobbying disclosure by trying to add this additional element to the bill.

We might be able to get around some of these problems by having lobbyists develop extensive accounting systems to act as policemen for their clients, their partners, their officers, their directors, and their employees. But that kind of extensive policing system would create problems of its own.

2. Partial Measure. If the objective is to stop improper gifts to federal officials, what we need is an effective rule drawing the line between proper and improper gifts, and prohibiting the improper ones. This is what the Executive Branch has tried to achieve with its new gift rules, and it is what the Congress should try to achieve as well.

A requirement for lobbyists to disclose gifts would subject Members of Congress to potential embarrassment without ever drawing a clear line as to what is, and is not, acceptable behavior. The simple fact of disclosure on a lobbyist's report would create the implication that the Member had done something wrong, and could subject the Member to attacks in the press or by opponents.

But not all so-called "gifts" are improper. Here are some examples of gifts that may be proper --

- o The executive branch gift rules recognize that it is frequently in the government's interest for a federal official to travel to conferences, seminars, and speaking engagements, and authorize agencies to accept reimbursement for such travel. Under the Common Cause approach, however, such reimbursement for a legislative branch official would have to be reported as a "gift" (if reimbursed by a registered lobbyist), with the implication that it was somehow improper.
- o The executive branch gift rules authorize federal officials to participate in widely-attended gatherings when such attendance will further agency programs or operations. Under the Common Cause approach, however, attendance at such an event by a legislative branch official would have to be reported as a "gift" (if the event is sponsored by a registered lobbyist), with the implication that it was somehow improper.

In fact, unless we incorporate the entire 15-page executive branch gift rule into the bill, lobbyists would be required to disclose "gifts" to executive branch officials as well. Again, the implication would be that these "gifts" were somehow improper, even if they were entirely appropriate under the stringent executive branch rules.

The potential for embarrassment would be exacerbated by the fact that the reporting is in the hands of the lobbyist, who may make arbitrary decisions as to how much of the cost of an event to attribute to a particular public official. It is not impossible that a public official who simply attended a breakfast reception to give a speech could learn through the press that the entire cost of the reception had been reported by the lobbyist as a "gift".

Disclosure is not an objective in itself; Common Cause agrees that the ultimate objective is a strong gift rule which draws a clear line as to what is acceptable. Disclosure is intended as a means to that end -- by embarrassing Members of Congress through public disclosure and the implication that improper activity is going on, Common Cause hopes to persuade Congress to enact stronger gift rules. The preferable approach would be to avoid the embarrassment and move straight to the enactment of effective gift rules.

3. Difficult to Define. It would not be easy to come up with a workable approach to gift disclosure or prohibition for inclusion in this bill. Gift rules are extremely complex; the new executive branch rules took four years to draft and run to 15 pages, including all of the exceptions and exclusions.

Here are some examples of the complexities --

- o The reception. If a corporation holds a Washington reception in honor of a public official, that would appear to be both a lobbying expense and a gift. But what if the same corporation holds a reception to honor its retiring Chief Executive Officer, and a public official is among the invitees? What if the reception to which the official is invited is at the ground-breaking on a new facility to be built in the official's home state? Are these "lobbying expenses" at all? Should the corporation be expected to itemize them as "gifts"?
- o Entertainment. If a company invites a public official to a private showing of a new movie, that would appear to be both a lobbying expense and a gift. But what if the same company is sponsoring a new exhibit at the National Gallery, and public officials are invited to the opening -- is that "lobbying"? Is it a gift from the company that would have to be itemized?
- o Meals. If a lobbyist invites a public official to dinner and picks up the tab, that would appear to be both a lobbying expense and a gift. But what if the invitation is to dinner at a private residence? Does it matter whether the dinner is catered?

These are all questions that can be answered. The point is not that these lines cannot be drawn, but that it isn't as easy as Common Cause would like us to think. It has taken us two years to come up with a workable definition of "lobbying" to get this bill ready to go; we can't afford to wait another two years before we enact it into law.

4. Defeats Streamlining Objective. Finally, requiring the itemization of gifts on a per Member (or agency official) basis would be inconsistent with the streamlining objective of the Lobbying Disclosure Act. We have tried to get away from the concept of itemized disclosure, to minimize record-keeping burdens and make it as easy as possible to comply. In this way, we hope to achieve our objective of registering every paid, professional lobbyist without the need to resort to massive enforcement efforts.

There are other practical issues as well. For example, this bill requires lobbying firms to file a separate registration and report for each client they represent. Suppose that a lobbying firm representing hundreds of clients were to give something to a federal official. To which client would that gift be attributed? To all of them? Would it be reported a hundred separate times, on a hundred separate forms?

Perhaps it would make the most sense to have lobbyists file separate reports on their gifts, so that these expenditures are not attributable to any specific client. But if we have separate gift reports, we come back to the original question -- why limit such disclosure to lobbyists alone? Why shouldn't anybody who gives a gift to a federal official file such a report? And if so, what relationship would the requirement have to this bill?

This is an important bill, which will result in the disclosure of hundreds of millions of dollars of lobbying going on behind closed doors in this city. Dozens of efforts to overhaul and reform these laws have failed over the last three decades. This bill is ready to go, and we should act on it, not take on new issues that could take additional months, or even years, to resolve.

March 22, 1993

MEMORANDUM FOR BRUCE REED
MICHAEL WALDMAN
MELANNE VEREER
BETH NOLAN

FROM: DONSLIA STRONG

SUBJECT: LOBBYING DISCLOSURE ACT OF 1993

This memorandum sets forth options for strengthening the Lobbying Disclosure Act of 1993.

As you may know, Senator Levin and Representative Bryant have introduced the Lobbying Disclosure Act of 1993, S.349 and H.R. 823 respectively. The bills are identical. The bills would require paid professional lobbyists to register with a new office in the Department of Justice upon having a "lobbying contact" with a covered official. Covered officials include Members of Congress, their staff and committees. In addition, for the first time a "lobbying contact" with executive branch officials would trigger a registration requirement.

President Clinton has repeatedly stated that political reform is one of his administration's highest priorities. The following options are designed to ensure that political reform is real.

1. Require lobbyists to disclose their campaign contributions.
2. Require lobbyists to disclose their bundling activities in total.
3. Require lobbyists to disclose the PACs they contribute to.
4. Establish a code of ethics for lobbyists. (Montana has a law like this.)
5. Require all lobbyists reports and statements to be under oath.
6. Require each lobbyist listed to sign the registration and report statements.
7. Require separate disclosures for grassroots expenditures and issues encouraged in grassroots lobbying. (i.e. artificially stimulated letter writing or telephone calling campaign)

8. Impose late fees for late semi-annual reports.
9. Require congressmen and certain cabinet level officials to report lobbying contacts.
10. Set strict spending limits for lobbyists activities.
11. Provide for publication of initial registration in the Congressional Record.
12. Require lobbyists to disclose gifts to Congressmen and their staff.
13. Require lobbyists lobbying for a joint venture involving a foreign entity to disclose the foreign entity notwithstanding the 20% test.
14. Clearly set forth archival responsibility time limit.
15. Limit all gifts from lobbyists to Congress.