

HONEST LEADERSHIP AND OPEN GOVERNMENT ACT OF 2007

MAY 21, 2007.—Ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2316]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2316) to provide more rigorous requirements with respect to disclosure and enforcement of lobbying laws and regulations, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Honest Leadership and Open Government Act of 2007”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—CLOSING THE REVOLVING DOOR

Sec. 101. Disclosure by Members and staff of employment negotiations.
 Sec. 102. Wrongfully influencing a private entity's employment decisions or practices.
 Sec. 103. Additional restrictions on contractors.
 Sec. 104. Effective date.

TITLE II—FULL PUBLIC DISCLOSURE OF LOBBYING

Sec. 201. Quarterly filing of lobbying disclosure reports.
 Sec. 202. Electronic filing of lobbying disclosure reports.
 Sec. 203. Additional lobbying disclosure requirements.
 Sec. 204. Quarterly reports on other contributions.
 Sec. 205. Prohibition on provision of gifts or travel by registered lobbyists to Members of Congress and to congressional employees.
 Sec. 206. Disclosure of lobbying activities by certain coalitions and association.
 Sec. 207. Disclosure by registered lobbyists of past executive branch and congressional employment.
 Sec. 208. Public database of lobbying disclosure information; maintenance of information.
 Sec. 209. Inapplicability to certain political committees.
 Sec. 210. Effective date.

TITLE III—ENFORCEMENT OF LOBBYING RESTRICTIONS

Sec. 301. Increased civil and criminal penalties for failure to comply with lobbying disclosure requirements.

TITLE IV—INCREASED DISCLOSURE

Sec. 401. Prohibition on official contact with spouse of Member who is a registered lobbyist.
 Sec. 402. Posting of travel and financial disclosure reports on public website of Clerk of the House of Representatives.

TITLE V—GENERAL PROVISIONS

Sec. 501. Rule of construction.

TITLE I—CLOSING THE REVOLVING DOOR

SEC. 101. DISCLOSURE BY MEMBERS AND STAFF OF EMPLOYMENT NEGOTIATIONS.

The Rules of the House of Representatives are amended by redesignating rules XXVII and XXVIII as rules XXVIII and XXIX, respectively, and by inserting after rule XXVI the following new rule:

“RULE XXVII

“DISCLOSURE BY MEMBERS AND STAFF OF EMPLOYMENT NEGOTIATIONS

“1. A Member, Delegate, or Resident Commissioner shall not directly negotiate or have any agreement of future employment or compensation until after his or her successor has been elected, unless such Member, Delegate, or Resident Commissioner, within 3 business days after the commencement of such negotiation or agreement of future employment or compensation, files with the Committee on Standards of Official Conduct a statement, which must be signed by the Member, Delegate, or Resident Commissioner, regarding such negotiations or agreement, including the name of the private entity or entities involved in such negotiations or agreement, and the date such negotiations or agreement commenced.

“2. An officer or an employee of the House earning in excess of 75 percent of the salary paid to a Member shall notify the Committee on Standards of Official Conduct that he or she is negotiating or has any agreement of future employment or compensation.

“3. The disclosure and notification under this rule shall be made within 3 business days after the commencement of such negotiation or agreement of future employment or compensation.

“4. A Member, Delegate, or Resident Commissioner, and an officer or employee to whom this clause applies, shall recuse himself or herself from any matter in which there is a conflict of interest or an appearance of a conflict for that Member, Delegate, Resident Commissioner, officer, or employee under this rule and shall no-

tify the Committee on Standards of Official Conduct of such recusal. A Member, Delegate, or Resident Commissioner making such recusal shall, upon such recusal, submit to the Clerk for public disclosure the statement of disclosure under clause 1 with respect to which the recusal was made.”.

SEC. 102. WRONGFULLY INFLUENCING A PRIVATE ENTITY’S EMPLOYMENT DECISIONS OR PRACTICES.

(a) **IN GENERAL.**—Chapter 11 of title 18, United States Code, is amended by adding at the end the following:

“§ 227. Wrongfully influencing a private entity’s employment decisions by a Member of Congress

“Whoever, being a Senator or Representative in, or a Delegate or Resident Commissioner to, the Congress or an employee of either House of Congress, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity—

“(1) takes or withholds, or offers or threatens to take or withhold, an official act, or

“(2) influences, or offers or threatens to influence, the official act of another, shall be fined under this title or imprisoned for not more than 15 years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.”.

(b) **NO INFERENCE.**—Nothing in section 227 of title 18, United States Code, as added by this section, shall be construed to create any inference with respect to whether the activity described in section 227 of title 18, United States Code, was a criminal or civil offense before the enactment of this Act, including under section 201(b), 201(c), or any of sections 203 through 209, of title 18, United States Code.

(c) **CONFORMING AMENDMENT.**—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end the following:

“227. Wrongfully influencing a private entity’s employment decisions by a Member of Congress.”.

SEC. 103. ADDITIONAL RESTRICTIONS ON CONTRACTORS.

(a) **PROHIBITION.**—Chapter 11 of title 18, United States Code, is amended by inserting after section 219 the following new section:

“§ 220. Restrictions on contractors with Congress

“(a) **RESTRICTIONS.**—

“(1) **IN GENERAL.**—If a person who is an attorney or a law firm, including a professional legal corporation or partnership, or an attorney employed by such a law firm, enters into a contract to provide services to—

“(A) a committee of Congress, or a subcommittee of any such committee,

“(B) a Member of the leadership of the House of Representatives or a Member of the leadership of the Senate,

“(C) a covered legislative branch official, or

“(D) a working group or caucus organized to provide legislative services or other assistance to Members of Congress,

the attorney or law firm entering into the contract, and the law firm by which the attorney entering into the contract is employed, may not, during the period prescribed in paragraph (2), knowingly make, with the intent to influence, any communication or appearance before any person described in paragraph (3), on behalf of any other person (except the United States), in connection with any matter on which such attorney or law firm seeks official action by a Member, officer, or employee of either House of Congress, in his or her official capacity.

“(2) **PERIOD DESCRIBED.**—The period referred to in paragraph (1) is the period during which the contract described in paragraph (1) is in effect, and a period of 1 year after the attorney or law firm, as the case may be, is no longer subject to the contract.

“(3) **PERSONS DESCRIBED.**—The persons referred to in paragraph (1) with respect to appearances or communications by an attorney or law firm are any Member, officer, or employee of either House of Congress.

“(b) **PENALTY.**—Any person who violates paragraph (1) shall be punished as provided in section 216.

“(c) **DEFINITIONS.**—For purposes of this section—

“(1) the term ‘committee of Congress’ includes any standing committee, joint committee, and select committee;

“(2) the term ‘covered legislative branch official’ has the meaning given that term in section 3 of the Lobbying Disclosure Act of 1995;

“(3)(A) a person is an employee of a House of Congress if that person is an employee of the House of Representatives or an employee of the Senate;

“(B) the terms ‘employee of the House of Representatives’ and ‘employee of the Senate’ have the meanings given those terms in section 207(e)(7);

“(4) an attorney is ‘employed’ by a law firm if the attorney is an employee of, or a partner or other member of, the law firm;

“(5) the terms ‘Member of the leadership of the House of Representatives’ and ‘Member of the leadership of the Senate’ have the meanings given those terms in section 207(e)(7); and

“(6) the term ‘Member of Congress’ means a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.”.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 11 of title 18, United States Code, is amended by inserting after the item relating to section 219 the following new item:

“220. Restrictions on contractors with Congress.”.

(2) Section 216 of title 18, United States Code, is amended by striking “or 209” each place it appears and inserting “, 209, or 220”.

SEC. 104. EFFECTIVE DATE.

(a) SECTION 101.—The amendment made by section 101 shall take effect on the date of the enactment of this Act, and shall apply to negotiations commenced, and agreements entered into, on or after that date.

(b) SECTION 102.—The amendments made by section 102 shall take effect on the date of the enactment of this Act.

(c) SECTION 103.—The amendments made by section 103 shall take effect on May 23, 2007, and shall apply with respect to any contract entered into before, on, or after that date.

TITLE II—FULL PUBLIC DISCLOSURE OF LOBBYING

SEC. 201. QUARTERLY FILING OF LOBBYING DISCLOSURE REPORTS.

(a) QUARTERLY FILING REQUIRED.—Section 5 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604) is amended—

(1) in subsection (a)—

(A) by striking “SEMIANNUAL” and inserting “QUARTERLY”;

(B) by striking “the semiannual period” and all that follows through “July of each year” and insert “the quarterly period beginning on the first day of January, April, July, and October of each year”; and

(C) by striking “such semiannual period” and inserting “such quarterly period”; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking “semiannual report” and inserting “quarterly report”;

(B) in paragraph (2), by striking “semiannual filing period” and inserting “quarterly period”;

(C) in paragraph (3), by striking “semiannual period” and inserting “quarterly period”; and

(D) in paragraph (4), by striking “semiannual filing period” and inserting “quarterly period”.

(b) CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 3(10) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) is amended by striking “six month period” and inserting “3-month period”.

(2) REGISTRATION.—Section 4 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603) is amended—

(A) in subsection (a)(3)(A), by striking “semiannual period” and inserting “quarterly period”; and

(B) in subsection (b)(3)(A), by striking “semiannual period” and inserting “quarterly period”.

(3) ENFORCEMENT.—Section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is amended in paragraph (6) by striking “semiannual period” and inserting “quarterly period”.

(4) ESTIMATES.—Section 15 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1610) is amended—

(A) in subsection (a)(1), by striking “semiannual period” and inserting “quarterly period”; and

(B) in subsection (b)(1), by striking “semiannual period” and inserting “quarterly period”.

(5) DOLLAR AMOUNTS.—Section 4 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603) is further amended—

(A) in subsection (a)(3)(A)(i), by striking “\$5,000” and inserting “\$2,500”;

(B) in subsection (a)(3)(A)(ii), by striking “\$20,000” and inserting “\$10,000”;

(C) in subsection (b)(3)(A), by striking “\$10,000” and inserting “\$5,000”; and

(D) in subsection (b)(4), by striking “\$10,000” and inserting “\$5,000”.

SEC. 202. ELECTRONIC FILING OF LOBBYING DISCLOSURE REPORTS.

(a) IN GENERAL.—Section 5 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604) is amended by adding at the end the following:

“(d) ELECTRONIC FILING REQUIRED.—A report required to be filed under this section shall be filed in electronic form, in addition to any other form that may be required by the Secretary of the Senate or the Clerk of the House of Representatives.”.

(b) EFFECTIVE DATE.—The requirement in section 5(d) of the Lobbying Disclosure Act of 1995, as added by subsection (a) of this section, that reports be filed electronically shall take effect on the day after the end of the first calendar quarter that begins after the date of the enactment of this Act.

SEC. 203. ADDITIONAL LOBBYING DISCLOSURE REQUIREMENTS.

Section 5(b) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(b)) is amended—

(1) in paragraph (3), by striking “and” after the semicolon;

(2) in paragraph (4) by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(5) a certification that the lobbying firm, or registrant, and each employee listed as a lobbyist under section 4(b)(6) or paragraph (2)(C) of this subsection for that lobbying firm or registrant, has not provided, requested, or directed a gift, including travel, to a Member of Congress or an officer or employee of either House of Congress in violation rule XXXV of the Standing Rules of the Senate or rule XXV of the Rules of the House of Representatives.”.

SEC. 204. QUARTERLY REPORTS ON OTHER CONTRIBUTIONS.

Section 5 of the Act (2 U.S.C. 1604) is further amended by adding at the end the following:

“(e) QUARTERLY REPORTS ON OTHER CONTRIBUTIONS.—

“(1) IN GENERAL.—Not later than 45 days after the end of the quarterly period beginning on the first day of January, April, July, and October of each year, or on the first business day after the first day of such month if that day is not a business day, each person who is registered or is required to register under paragraph (1) or (2) of section 4(a), and each employee who is or is required to be listed as a lobbyist under section 4(b)(6) or subsection (b) of this section, shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives containing—

“(A) the name of the person;

“(B) in the case of an employee, his or her the employer;

“(C) the names of all political committees established or administered by the person;

“(D) the name of each Federal candidate or officeholder, leadership PAC, or political party committee, to whom aggregate contributions equal to or exceeding \$200 were made by the person or a political committee established or administered by the person within the calendar year, and the date and amount of each contribution made within the quarterly period;

“(E) the date, recipient, and amount of funds contributed, disbursed, or arranged (or a good faith estimate thereof) by the person or a political committee established or administered by the person during the quarterly period—

“(i) to pay the cost of an event to honor or recognize a covered legislative branch official or covered executive branch official;

“(ii) to, or on behalf of, an entity that is named for a covered legislative branch official, or to a person or entity in recognition of such official;

“(iii) to an entity established, financed, maintained, or controlled by a covered legislative branch official or covered executive branch official, or an entity designated by such official; or

“(iv) to pay the costs of a meeting, retreat, conference, or other similar event held by, or for the benefit of, 1 or more covered legislative branch officials or covered executive branch officials;

“(F) any information reported to the Federal Election Commission under the second sentence of section 315(a)(8) of the Federal Election Campaign Act of 1971 (relating to reports by intermediaries and conduits of the original source and the intended recipient of contributions under such Act) during the quarterly period by the person or a political committee established or administered by the person; and

“(G) the amount and recipient of any funds provided to an organization described in section 527 of the Internal Revenue Code of 1986 that is not treated as a political committee under section 301(4) under the Federal Election Campaign Act of 1971.

“(2) DEFINITION.—In this subsection, the term ‘leadership PAC’ means, with respect to an individual holding Federal office, an unauthorized political committee that is associated with an individual holding Federal office, except that such term shall not apply in the case of a political committee of a political party.”.

SEC. 205. PROHIBITION ON PROVISION OF GIFTS OR TRAVEL BY REGISTERED LOBBYISTS TO MEMBERS OF CONGRESS AND TO CONGRESSIONAL EMPLOYEES.

(a) PROHIBITION.—The Lobbying Disclosure Act of 1995 (2 U.S.C. 1601 et seq.) is amended by adding at the end the following:

“SEC. 25. PROHIBITION ON PROVISION OF GIFTS OR TRAVEL BY REGISTERED LOBBYISTS TO MEMBERS OF CONGRESS AND TO CONGRESSIONAL EMPLOYEES.

“(a) PROHIBITION.—Any person described in subsection (b) may not make a gift or provide travel to a Member, officer, or employee of Congress, if the person has knowledge that the gift or travel may not be accepted under the rules of the House of Representatives or the Senate.

“(b) PERSONS SUBJECT TO PROHIBITION.—The persons subject to the prohibition under subsection (a) are any lobbyist that is registered or is required to register under section 4(a)(1), any organization that employs 1 or more lobbyists and is registered or is required to register under section 4(a)(2), and any employee listed or required to be listed as a lobbyist by a registrant under section 4(b)(6).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 206. DISCLOSURE OF LOBBYING ACTIVITIES BY CERTAIN COALITIONS AND ASSOCIATION.

Paragraph (2) of section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) is amended to read as follows:

“(2) CLIENT.—

“(A) IN GENERAL.—The term ‘client’ means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees.

“(B) TREATMENT OF COALITIONS AND ASSOCIATIONS.—

“(i) IN GENERAL.—Except as provided in clauses (ii), (iii), and (iv), in the case of a coalition or association that employs or retains other persons to conduct lobbying activities, each of the individual members of the coalition or association (and not the coalition or association) is the client. For purposes of section 4(a)(3), the preceding sentence shall not apply, and the coalition or association shall be treated as the client.

“(ii) EXCEPTION FOR CERTAIN TAX-EXEMPT ASSOCIATIONS.—In the case of an association—

“(I) which is described in paragraph (3) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, or

“(II) which is described in any other paragraph of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which has substantial exempt activities other than lobbying with respect to the specific issue for which it engaged the person filing the registration statement under section 4,

the association (and not its members) shall be treated as the client.

“(iii) EXCEPTION FOR CERTAIN MEMBERS.—Information on a member of a coalition or association need not be included in any registration under section 4 if the amount reasonably expected to be contributed by such member toward the activities of the coalition or association of in-

fluencing legislation is less than \$500 during the quarterly period during which the registration would be made.

“(iv) NO DONOR OR MEMBERSHIP LIST DISCLOSURE.—No disclosure is required under this Act, by reason of this subparagraph, with respect to lobbying activities if it is publicly available knowledge that the organization that would be identified under this subparagraph is affiliated with the client concerned or has been publicly disclosed to have provided funding to the client, unless the organization in whole or in major part plans, supervises, or controls such lobbying activities. Nothing in this subparagraph shall be construed to require the disclosure of any information about individuals who are members of, or donors to, an entity treated as a client by this Act or an organization identified under this subparagraph.”.

SEC. 207. DISCLOSURE BY REGISTERED LOBBYISTS OF PAST EXECUTIVE BRANCH AND CONGRESSIONAL EMPLOYMENT.

Section 4(b)(6) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)(6)) is amended by striking “or a covered legislative branch official” and all that follows through “as a lobbyist on behalf of the client,” and inserting “or a covered legislative branch official,”.

SEC. 208. PUBLIC DATABASE OF LOBBYING DISCLOSURE INFORMATION; MAINTENANCE OF INFORMATION.

(a) DATABASE REQUIRED.—Section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is further amended—

- (1) in paragraph (7), by striking “and” at the end;
- (2) in paragraph (8), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

“(9) maintain, and make available to the public over the Internet, without a fee or other access charge, in a searchable, sortable, and downloadable manner, an electronic database that—

“(A) includes the information contained in registrations and reports filed under this Act;

“(B) directly links the information it contains to the information disclosed in reports filed with the Federal Election Commission under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434); and

“(C) is searchable and sortable to the maximum extent practicable, including searchable and sortable by each of the categories of information described in section 4(b) or 5(b); and

“(10) retain the information contained in a registration or report filed under this Act for a period of at least 6 years after the registration or report (as the case may be) is filed.”.

(b) AVAILABILITY OF REPORTS.—

(1) IN GENERAL.—Section 6(4) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605) is amended by inserting before the semicolon at the end the following: “and, in the case of a report filed in electronic form pursuant to section 5(d), make such report available for public inspection over the Internet not more than 48 hours after the report is so filed”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the day after the end of the first calendar quarter that begins after the date of the enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out paragraph (9) of section 6 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605), as added by subsection (a) of this section.

SEC. 209. INAPPLICABILITY TO CERTAIN POLITICAL COMMITTEES.

The amendments made by this title shall not apply to the activities of any political committee described in section 301(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)).

SEC. 210. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this title shall apply with respect to any quarterly filing period under the Lobbying Disclosure Act of 1995 that begins on or after January 1, 2008.

TITLE III—ENFORCEMENT OF LOBBYING RESTRICTIONS

SEC. 301. INCREASED CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH LOBBYING DISCLOSURE REQUIREMENTS.

Section 7 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1606) is amended—

- (1) by striking “Whoever” and inserting “(a) CIVIL PENALTY.—Whoever”;
- (2) by striking “\$50,000” and inserting “\$100,000”; and
- (3) by adding at the end the following:

“(b) CRIMINAL PENALTY.—Whoever knowingly and corruptly fails to comply with any provision of this Act shall be imprisoned for not more than 5 years or fined under title 18, United States Code, or both.”.

TITLE IV—INCREASED DISCLOSURE

SEC. 401. PROHIBITION ON OFFICIAL CONTACT WITH SPOUSE OF MEMBER WHO IS A REGISTERED LOBBYIST.

Rule XXV of the Rules of the House of Representatives is amended by adding at the end the following new clause:

“7. A Member, Delegate, or Resident Commissioner shall prohibit all staff employed by that Member, Delegate, or Resident Commissioner (including staff in personal, committee, and leadership offices) from having any official contact with that individual’s spouse if that spouse is a lobbyist under the Lobbying Disclosure Act of 1995 or is employed or retained by such a lobbyist for the purpose of influencing legislation.”.

SEC. 402. POSTING OF TRAVEL AND FINANCIAL DISCLOSURE REPORTS ON PUBLIC WEBSITE OF CLERK OF THE HOUSE OF REPRESENTATIVES.

(a) **REQUIRING POSTING ON INTERNET.**—The Clerk of the House of Representatives shall post on the public Internet site of the Office of the Clerk, in a format that is searchable, sortable, and downloadable, each of the following:

- (1) The advance authorizations, certifications, and disclosures filed with respect to transportation, lodging, and related expenses for travel under clause 5(b) of rule XXV of the Rules of the House of Representatives by Members (including Delegates and Resident Commissioners to the Congress), officers, and employees of the House.

- (2) The reports filed under section 103(h)(1) of the Ethics in Government Act of 1978 by Members of the House of Representatives (including Delegates and Resident Commissioners to the Congress).

(b) **APPLICABILITY AND TIMING.**—

- (1) **APPLICABILITY.**—Subject to paragraph (2), subsection (a) shall apply with respect to information received by the Clerk of the House of Representatives on or after the date of the enactment of this Act.

- (2) **TIMING.**—The Clerk of the House of Representatives shall—

(A) not later than August 1, 2008, post the information required by subsection (a) that the Clerk receives by June 1, 2008; and

(B) not later than the end of each 45-day period occurring after information is required to be posted under subparagraph (A), post the information required by subsection (a) that the Clerk has received since the last posting under this subsection.

- (c) **RETENTION.**—The Clerk shall maintain the information posted on the public Internet site of the Office of the Clerk under this section for a period of at least 6 years after receiving the information.

TITLE V—GENERAL PROVISIONS

SEC. 501. RULE OF CONSTRUCTION.

Nothing in this Act or the amendments made by this Act shall be construed to prohibit any expressive conduct protected from legal prohibition by, or any activities protected by the free speech, free exercise, or free association clauses of, the First Amendment to the Constitution.

PURPOSE AND SUMMARY

Federal lobbying is a multi-billion dollar industry, and spending to influence Members of Congress and Executive Branch officials has continued to increase over the last decade. While the Lobbying Disclosure Act was intended to promote transparency and accountability in the Federal lobbying industry, it falls far short of a complete solution. Its shortcomings were highlighted during the 109th Congress by the conviction of a high-profile lobbyist, as well as a number of highly publicized incidents involving the provision of privately-funded travel, free meals, and lavish entertainment by lobbyists to Members of Congress, congressional staff, and some Executive Branch officials in exchange for favorable treatment for clients with specific interests before the Government.

H.R. 2316, the “Honest Leadership and Open Government Act of 2007,” addresses these loopholes in current law by requiring more rigorous disclosure of lobbying-related activities and heightened enforcement of lobbying laws and regulations.

BACKGROUND AND NEED FOR THE LEGISLATION

THE LOBBYING DISCLOSURE ACT OF 1995

In 1995, Congress undertook the most comprehensive overhaul of Federal lobbying law in nearly 50 years. The “Lobbying Disclosure Act of 1995” (“LDA”) was crafted to provide more specific thresholds, and more inclusive definitions of “lobbyist” and “lobbying” activities and contacts that would trigger the requirements for the registration and reporting of those who are compensated for their lobbying activities. The LDA requires lobbyists and lobbying firms, as defined in the Act, to register with the Secretary of the Senate and the Clerk of the House within 45 days after making lobbying contacts or being employed to make such contacts. These lobbyists also must submit semi-annual reports identifying their clients and employers, the costs of lobbying, and the issues on which they lobbied. These reports must identify the name of the registrant, lobbyists the registrant employs, the client, and the broad issue areas for which lobbying was done. In addition, the disclosure must include:

- (1) a good faith estimate, by broad category, of the total amount of lobbying-related income from the client, or expenditures by an organization lobbying in its own behalf, during the semiannual period (expenditures may be estimated at less than \$10,000 or in increments of \$20,000);
- (2) the specific issues that were the subject of the lobbyist’s efforts, including a list of bill numbers “to the maximum extent practicable;”
- (3) a statement identifying which bodies of Congress and the Federal agencies that were contacted by the lobbyist; and
- (4) a list of the employees of the registrant who acted as lobbyists on behalf of the client, and a declaration of any previous employment as a covered Executive Branch or Legislative Branch official in the 2 years prior to registration.

The Secretary of the Senate and the Clerk of the House are responsible for reviewing and, where necessary, verifying the accu-

racy of registrations and reports that are made, and are further required to make the registrations and reports available for public inspection and copying. Moreover, the Secretary and the Clerk must notify in writing any lobbyist or lobbying firm of noncompliance with registration and reporting requirements, and must further notify the U.S. Attorney for the District of Columbia of such noncompliance if the lobbyist or lobbying firm fails to remedy its noncompliance within 60 days of having received the notice. Whoever knowingly fails to timely remedy a defective filing within 60 days after such notice by the Secretary or the Clerk, or knowingly fails to comply with any other provision of the Act, is subject to a civil fine of not more than \$50,000.

NEED FOR LEGISLATION

In a study of the Federal lobbying industry published in April 2006, the Center for Public Integrity found that since 1998, lobbyists have spent nearly \$13 billion to influence Members of Congress and other Federal officials on legislation and regulations. The same study found that in 2003 alone, lobbyists spent \$2.4 billion, with expenditures for 2004 estimated to grow to at least \$3 billion. This is roughly twice as much as the already vast amount that was spent on Federal political campaigns in the same time period.

The LDA contains a number of measures to help prevent inappropriate influence in the lobbying arena and promote greater transparency in lobbying activities. According to the Center's study, however, compliance with these requirements has been lacking. For example, the Center found:

- during the last 6 years, 49 out of the top 50 lobbying firms have failed to file one or more of the required forms;
- nearly 14,000 documents that should have been filed are missing;
- almost 300 individuals, companies, or associates have lobbied without being registered;
- more than 2,000 initial registrations were filed after the legal deadline; and
- in more than 2,000 instances, lobbyists never filed the required termination documents at all.

Although the LDA requires the Secretary of the Senate and the Clerk of the House to refer cases of noncompliance to the U.S. Attorney for the District of Columbia for enforcement, it appears that this has not been done until very recently. It also appears that the number of infractions actually investigated by the Secretary or the Clerk is not nearly on a scale with the extent of noncompliance. It is also unclear whether enforcement actions are being effectively pursued by the Department of Justice.

HEARINGS

The Committee's Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing to examine the issue of lobbying reform and S. 1, a Senate counterpart to H.R. 2316, on March 1, 2007. Witness testimony was received from Ken Gross, a partner with Skadden, Arps, Slate, Meagher & Flom; Sarah Dufendach, Chief of Legislative Affairs at Common Cause; Thomas E. Mann,

Senior Fellow for Governance Studies at the Brookings Institution; and Bradley Smith, former Chairman of the Federal Election Commission.

COMMITTEE CONSIDERATION

On May 17, 2007, the Committee met in open session and ordered the bill H.R. 2316 favorably reported with an amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 2316:

1. An amendment by Mr. Meehan to prohibit payment for an event in honor of a Member of Congress at a national political party nominating convention. Defeated 5 to 27.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen	X		
Mr. Johnson		X	
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff	X		
Mr. Davis		X	
Ms. Wasserman Schultz			
Mr. Ellison		X	
Mr. Smith (Texas)		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot	X		
Mr. Lungren		X	
Mr. Cannon		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Total	5	27	

2. An amendment by Mr. Chabot to extend the authorization of the Ethics in Government Act of 1978. Defeated 17 to 18.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters			
Mr. Meehan		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz			
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	17	18	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2316, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 21, 2007.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2316, the Honest Leadership and Open Government Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis and Matthew Pickford (for Federal costs), who can be reached at 226-2860, and Craig Cammarata (for the private-sector impact), who can be reached at 226-2940.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 2316—Honest Leadership and Open Government Act of 2007.

SUMMARY

H.R. 2316 would amend the Lobbying Disclosure Act of 1995 and the rules of the House of Representatives. Major provisions of the legislation would expand reporting requirements for lobbyists and Members of Congress and would prohibit lobbyists from making gifts to or financing travel for Members or Congressional employees. In addition, H.R. 2316 would require the Senate and the House of Representatives to provide free Internet access to information in lobbying reports and registrations filed with the Congress, including new reports that would be required under the bill concerning Congressional travel and lodging expenses.

CBO estimates that implementing H.R. 2316 would cost about \$1 million a year, beginning in fiscal year 2008, subject to the availability of appropriated funds. Enacting the bill could increase revenues and direct spending from fines and penalties on new violations of campaign finance laws, but CBO estimates that those effects would not be significant.

H.R. 2316 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

H.R. 2316 would impose several private-sector mandates, as defined in UMRA, on the lobbying industry and certain political organizations. Based on information from the Secretary of the Senate and the Clerk of the House, CBO estimates that the aggregate direct cost of all of the mandates in the bill would fall below the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2316 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

By Fiscal Year, in Millions of Dollars					
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹					
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1

1. Enacting the bill could also increase collections from civil and criminal penalties. Such penalties are recorded in the budget as revenues, and criminal penalties may later be spent. CBO estimates any resulting collections and spending would be less than \$500,000 a year.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2007 and that spending will follow historical patterns for similar activities.

Spending Subject to Appropriation

The legislation would expand Congressional reporting requirements for lobbyists and would require the House and Senate to make information filed by lobbyists available on the Internet. Based on information provided by Congressional administrative staff, CBO estimates that Congressional offices and committees would spend about \$1 million annually to collect, maintain, and disseminate information provided by lobbyists.

Revenues and Direct Spending

Enacting H.R. 2316 could increase Federal revenues and direct spending as a result of additional civil and criminal penalties for new violations of lobbying disclosure laws. Collections of civil penalties are recorded in the budget as revenues. Collections of criminal penalties are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation. CBO estimates that any additional revenues and direct spending that would result from enacting the bill would not be significant because of the relatively small number of cases likely to be involved.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 2316 contains no intergovernmental mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 2316 would impose several private-sector mandates, as defined in UMRA, on the lobbying industry and certain political organizations. The bill would impose new restrictions on lobbying activities and require lobbying entities, coalitions and associations to submit additional reports and disclosures to the Secretary of the Senate and the Clerk of the House. Based on information from those offices, CBO estimates that the aggregate direct cost of all of the private-sector mandates in the bill would fall below the annual threshold established by UMRA (\$131 million in 2007, adjusted annually for inflation).

The bill would impose several new requirements on lobbyists and lobbying organizations. Requirements on lobbyists and lobbying organizations would include but not be limited to:

- Electronic filing of lobbyist registrations and disclosure reports filed with the Secretary of the Senate or the Clerk of the House of Representatives;
- Quarterly, instead of semiannual, filing of lobbying disclosure reports; and
- Additional information in registration and disclosure reports including information on:
 - Contributions to members, Congressional staff, Federal officers and political entities by lobbyists;
 - Any gifts distributed by lobbying entities; and
 - Whether or not each registered lobbyist had prior experience as a covered executive or legislative branch official.

As of January 1, 2006, all lobbyists and lobbying organizations must register and file semiannual disclosure reports electronically with the Clerk of the House. However, electronic reporting is still optional for lobbyists and lobbying organizations filing in the Senate. Since all lobbyists must file similar reports with both the Clerk of the House and the Secretary of the Senate, the incremental cost of filing reports electronically with the Secretary of the Senate should be minimal. Because such entities already collect the information requested in the registration and disclosure reports, CBO estimates that the incremental costs associated with the new reporting requirements in the bill would not be substantial relative to UMRA's annual threshold for private-sector mandates.

The bill also would amend the Lobbying Disclosure Act of 1995 to require certain coalitions and associations to file disclosure reports. Those entities are not currently required to file disclosure reports with the Secretary of the Senate or the Clerk of the House. CBO expects the cost of compliance for those organizations to be small, relative to UMRA's annual threshold for private-sector mandates, because the reports would be filed electronically and the organizations would not be required to collect additional information.

ESTIMATE PREPARED BY:

Federal Costs: Matthew Pickford and Deborah Reis (226–2860)
 Impact on State, Local, and Tribal Governments: Elizabeth Cove
 (225–3220)
 Impact on the Private-Sector: Craig Cammarata (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
 Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2316 is provided to offer more rigorous requirements with respect to the disclosure and enforcement of lobbying laws and regulations.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 5, clause 2, and article 1 section 8, clauses 3 and 18 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2316 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title and Table of Contents. Section 1(a) sets forth the short title of the Act as the “Honest Leadership and Open Government Act of 2007.” Section 1(b) sets forth the Act’s table of contents.

Sec. 101. Disclosure by Members and Staff of Employment Negotiations. Section 101 adds a new Rule XXVII to the Rules of the House of Representatives that prohibits a Member, Delegate, or Resident Commissioner from entering into any negotiation or agreement with regard to future employment or salary until his or her successor has been elected unless, within three business days after the commencement of such negotiation or agreement, he or she files a signed statement with the Committee on Standards of Official Conduct (Standards Committee) disclosing the nature of such negotiation or agreement, the name of the private entity or entities involved, and the date when such agreement or negotiation commenced. In addition, section 101 requires senior staff earning more than 75% of a Member’s salary to notify the Standards Committee that he or she is negotiating, or has reached agreement on, future employment or salary within three business days of commencing such negotiation or agreement. The provision also specifies that an individual required to make such disclosure must recuse himself or herself from any matter in which there is a conflict of interest or an appearance of a conflict. Section 101(4) further requires that a Member, Delegate, or Resident Commissioner

submit a statement of disclosure to the Clerk for public release in the event that such a recusal is made.

Sec. 102. Wrongfully Influencing a Private Entity's Employment Decisions or Practices. Section 102 amends title 18 of the United States Code by adding a new section 227, which prohibits a Member, Delegate, Resident Commissioner, or senior staff from influencing employment decisions or practices of private entities for partisan political gain. A violation of this provision subjects the individual to being fined or imprisoned for a term up to 15 years.

Sec. 103. Additional Restrictions on Contractors. Section 103 amends title 18 of the United States Code to provide that an attorney or law firm, contracting to provide services to a committee of Congress, a Member of the Leadership of either House of Congress, a covered Legislative Branch official, or a working group or congressional caucus, may not knowingly make, with the intent to influence, any communication or appearance before any Member, officer, or employee of either House of Congress, on behalf of another in connection with any matter on which the attorney or law firm seeks official action by the Member, officer, or employee in his or her official capacity during the term of the contract and for 1 year thereafter.

Sec. 104. Effective Date. Section 104(a) provides that section 101 of the Act takes effect on the date of enactment of the Act and applies to negotiations commenced, and agreements entered into, on or after such date. Section 104(b) provides that section 102 takes effect on the Act's date of enactment. Section 104(c) provides that section 103 takes effect on May 23, 2007 and applies with respect to any contract entered into before, on or after such date.

Sec. 201. Quarterly Filing of Lobbying Disclosure Reports. Section 201 amends various sections of the Lobbying Disclosure Act to mandate quarterly, rather than semiannual, disclosure of lobbying reports. Registration is not required if the total income from lobbying activities does not exceed \$2,500 (compared with \$5,000 under current law) or total expenses in connection with lobbying activities does not exceed \$10,000 (\$20,000 under current law). The registration must contain information regarding any organization, other than the client, that contributes more than \$5,000 (\$10,000 under current law) toward the lobbying activities of the registrant.

Sec. 202. Electronic Filing of Lobbying Disclosure Reports. Section 202 amends section 5 of the Lobbying Disclosure Act to require electronic, rather than paper, filing of lobbying reports.

Sec. 203. Additional Lobbying Disclosure Requirements. Section 203 amends section 5(b) of the Lobbying Disclosure Act to require that lobbyists, lobbying firms, and their employees certify on their disclosure report that they did not give a gift in violation of the rules of the House or of the Senate.

Sec. 204. Quarterly Reports on Other Contributions. Section 204 amends section 5 of the Lobbying Disclosure Act to require lobbyists to provide additional information in the mandatory quarterly reports beyond what is required under current law with respect to contributions made to a Federal candidate, officeholder, leadership PAC, or political party committee if the contributions aggregate \$200 or more in the calendar year. It further requires that lobbyists disclose the amount of any funds provided to an organization described in section 527 of the Internal Revenue Code of 1986 that

is not treated as a political committee under the campaign finance rules, as well as the recipient of those funds.

Sec. 205. Prohibition on Provision of Gifts or Travel by Registered Lobbyists to Members of Congress and to Congressional Employees. Section 205 adds a new section 25 to the Lobbying Disclosure Act, making it a substantive violation of that Act for a lobbyist to provide a gift or travel to a Member, officer, or employee of Congress with knowledge that such gift or travel may not be accepted under the rules of the House or of the Senate.

Sec. 206. Disclosure of Lobbying Activities by Certain Coalitions and Association. Section 206 amends section 3(2) of the Lobbying Disclosure Act to change the definition of “client.” This has the effect of requiring the disclosure of lobbying activities by certain coalitions and associations. In the case of a coalition or association that employs lobbyists, the client is each of the individual members of the coalition or association. In contrast, current law provides that the client is the coalition or association itself. Section 206 exempts 501(c)(3) associations and other associations described under section 501(c) from the requirements of this section if such associations engage in substantial exempt activities with respect to the specific issue for which it engaged the person required to file. Disclosure regarding a member of a coalition or association is not required if the amount reasonably expected to be contributed by such member towards the activities of the coalition or association of influencing legislation is less than \$500 per quarter. This exemption does not apply if the member of a coalition or association unexpectedly makes aggregate contributions of more than \$500 in any quarterly period. Section 206 also clarifies that it does not require disclosure of the donors and individual members of such a coalition or association.

Sec. 207. Disclosure by Registered Lobbyists of Past Executive Branch and Congressional Employment. Section 207 amends section 4(b)(6) of the Lobbying Disclosure Act to require lobbyists who have formerly served as a covered Executive Branch or Legislative Branch official to disclose such prior employment. In contrast, current law mandates the disclosure of such prior employment only if it ended in the 2-year period before the lobbyist commenced present employment.

Sec. 208. Public Database of Lobbying Disclosure Information; Maintenance of Information. Section 208 amends section 6 of the Lobbying Disclosure Act to require the Secretary of the Senate and the Clerk of the House to maintain and provide online access free of charge in a searchable, sortable, and downloadable manner, to an electronic database that includes the information contained in registrations and reports filed under the Lobbying Disclosure Act (as amended by this Act) and that directly links reports under the Federal Election Campaign Act for a period of 6 years after they are filed. The reports must be made available within 48 hours after being filed.

Sec. 209. Inapplicability to Certain Political Committees. Section 209 exempts political committees, as defined in Section 301(4) of the Federal Election Campaign Act of 1971, from the requirements of title II of the bill. The sole purpose of section 209 is to ensure that nothing in Title II shall be construed to make any changes to the requirements imposed on political committees under the Fed-

eral Election Campaign Act of 1971, 2 U.S.C. §§ 431 *et seq.* Section 209 does not alter or limit the requirements imposed on lobbyists under Title II with regard to contributions made to, or raised for, political committees, and does not otherwise alter or limit the requirements of lobbyists under Title II with regard to the activities of political committees.

Sec. 210. Effective Date. Section 210 sets forth the effective date of title II of the bill as January 1, 2008, except as otherwise provided in the Act.

Sec. 301. Increased Civil and Criminal Penalties for Failure To Comply with Lobbying Disclosure Requirements. Section 301 increases the civil penalty for a violation of the Lobbying Disclosure Act from \$50,000 to \$100,000. The provision imposes a criminal penalty of up to 5 years for knowing and corrupt failure to comply with that Act.

Sec. 401. Prohibition on Official Contact with Spouse of Member Who Is a Registered Lobbyist. Section 401 amends rule XXV of the Rules of the House to require a Member to prohibit everyone on his or her staff from having any official contact with the Member's spouse if such spouse is a registered lobbyist or is employed or retained by a registered lobbyist to influence legislation.

Sec. 402. Posting of Travel and Financial Disclosure Reports on Public Website of Clerk of the House of Representatives. Section 402 requires the Clerk of the House to publicly post on an Internet site hosted by the House, within 45 days of filing, documents related to travel, lodging, and related expenses and reports under section 103(h)(1) of the Ethics in Government Act filed by Members, Delegates, and Resident Commissioners.

Sec. 501. Rule of Construction. Section 501 clarifies that nothing in this Act shall be construed to prohibit any expressive conduct protected by the first amendment to the Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

RULES OF THE HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

* * * * *

RULE XXV

LIMITATIONS ON OUTSIDE EARNED INCOME AND ACCEPTANCE OF GIFTS

Outside earned income; honoraria

1. (a) * * *

* * * * *

7. A Member, Delegate, or Resident Commissioner shall prohibit all staff employed by that Member, Delegate, or Resident Commissioner (including staff in personal, committee, and leadership offices) from having any official contact with that individual's spouse if that spouse is a lobbyist under the Lobbying Disclosure Act of 1995 or is employed or retained by such a lobbyist for the purpose of influencing legislation.

* * * * *

RULE XXVII

DISCLOSURE BY MEMBERS AND STAFF OF EMPLOYMENT NEGOTIATIONS

1. A Member, Delegate, or Resident Commissioner shall not directly negotiate or have any agreement of future employment or compensation until after his or her successor has been elected, unless such Member, Delegate, or Resident Commissioner, within 3 business days after the commencement of such negotiation or agreement of future employment or compensation, files with the Committee on Standards of Official Conduct a statement, which must be signed by the Member, Delegate, or Resident Commissioner, regarding such negotiations or agreement, including the name of the private entity or entities involved in such negotiations or agreement, and the date such negotiations or agreement commenced.

2. An officer or an employee of the House earning in excess of 75 percent of the salary paid to a Member shall notify the Committee on Standards of Official Conduct that he or she is negotiating or has any agreement of future employment or compensation.

3. The disclosure and notification under this rule shall be made within 3 business days after the commencement of such negotiation or agreement of future employment or compensation.

4. A Member, Delegate, or Resident Commissioner, and an officer or employee to whom this clause applies, shall recuse himself or herself from any matter in which there is a conflict of interest or an appearance of a conflict for that Member, Delegate, Resident Commissioner, officer, or employee under this rule and shall notify the Committee on Standards of Official Conduct of such recusal. A Member, Delegate, or Resident Commissioner making such recusal shall, upon such recusal, submit to the Clerk for public disclosure the statement of disclosure under clause 1 with respect to which the recusal was made.

RULE [XXVII] XXVIII

STATUTORY LIMIT ON PUBLIC DEBT.

1. * * *

* * * * *

RULE [XXVIII] XXIX

GENERAL PROVISIONS.

1. * * *

* * * * *

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec.

201. Bribery of public officials and witnesses.

* * * * *

220. *Restrictions on contractors with Congress.*

* * * * *

227. *Wrongfully influencing a private entity's employment decisions by a Member of Congress.*

* * * * *

§ 216. Penalties and injunctions

(a) The punishment for an offense under section 203, 204, 205, 207, 208, [or 209], 209, or 220 of this title is the following:

(1) * * *

* * * * *

(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 203, 204, 205, 207, 208, [or 209], 209, or 220 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under section 203, 204, 205, 207, 208, [or 209], 209, or 220 of this title, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not

preclude any other remedy which is available by law to the United States or any other person.

* * * * *

§ 220. Restrictions on contractors with Congress

(a) *RESTRICTIONS.*—

(1) *IN GENERAL.*—If a person who is an attorney or a law firm, including a professional legal corporation or partnership, or an attorney employed by such a law firm, enters into a contract to provide services to—

(A) a committee of Congress, or a subcommittee of any such committee,

(B) a Member of the leadership of the House of Representatives or a Member of the leadership of the Senate,

(C) a covered legislative branch official, or

(D) a working group or caucus organized to provide legislative services or other assistance to Members of Congress,

the attorney or law firm entering into the contract, and the law firm by which the attorney entering into the contract is employed, may not, during the period prescribed in paragraph (2), knowingly make, with the intent to influence, any communication or appearance before any person described in paragraph (3), on behalf of any other person (except the United States), in connection with any matter on which such attorney or law firm seeks official action by a Member, officer, or employee of either House of Congress, in his or her official capacity.

(2) *PERIOD DESCRIBED.*—The period referred to in paragraph (1) is the period during which the contract described in paragraph (1) is in effect, and a period of 1 year after the attorney or law firm, as the case may be, is no longer subject to the contract.

(3) *PERSONS DESCRIBED.*—The persons referred to in paragraph (1) with respect to appearances or communications by an attorney or law firm are any Member, officer, or employee of either House of Congress.

(b) *PENALTY.*—Any person who violates paragraph (1) shall be punished as provided in section 216.

(c) *DEFINITIONS.*—For purposes of this section—

(1) the term “committee of Congress” includes any standing committee, joint committee, and select committee;

(2) the term “covered legislative branch official” has the meaning given that term in section 3 of the Lobbying Disclosure Act of 1995;

(3)(A) a person is an employee of a House of Congress if that person is an employee of the House of Representatives or an employee of the Senate;

(B) the terms “employee of the House of Representatives” and “employee of the Senate” have the meanings given those terms in section 207(e)(7);

(4) an attorney is “employed” by a law firm if the attorney is an employee of, or a partner or other member of, the law firm;

(5) the terms “Member of the leadership of the House of Representatives” and “Member of the leadership of the Senate” have the meanings given those terms in section 207(e)(7); and
 (6) the term “Member of Congress” means a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

* * * * *

§227. Wrongfully influencing a private entity’s employment decisions by a Member of Congress

Whoever, being a Senator or Representative in, or a Delegate or Resident Commissioner to, the Congress or an employee of either House of Congress, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity—

(1) takes or withholds, or offers or threatens to take or withhold, an official act, or

(2) influences, or offers or threatens to influence, the official act of another,

shall be fined under this title or imprisoned for not more than 15 years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

* * * * *

LOBBYING DISCLOSURE ACT OF 1995

* * * * *

SEC. 3. DEFINITIONS.

As used in this Act:

(1) * * *

[(2) CLIENT.—The term “client” means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members.]

(2) CLIENT.—

(A) IN GENERAL.—The term “client” means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees.

(B) TREATMENT OF COALITIONS AND ASSOCIATIONS.—

(i) IN GENERAL.—Except as provided in clauses (ii), (iii), and (iv), in the case of a coalition or association that employs or retains other persons to conduct lobbying activities, each of the individual members of the

coalition or association (and not the coalition or association) is the client. For purposes of section 4(a)(3), the preceding sentence shall not apply, and the coalition or association shall be treated as the client.

(ii) EXCEPTION FOR CERTAIN TAX-EXEMPT ASSOCIATIONS.—In the case of an association—

(I) which is described in paragraph (3) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, or

(II) which is described in any other paragraph of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which has substantial exempt activities other than lobbying with respect to the specific issue for which it engaged the person filing the registration statement under section 4,

the association (and not its members) shall be treated as the client.

(iii) EXCEPTION FOR CERTAIN MEMBERS.—Information on a member of a coalition or association need not be included in any registration under section 4 if the amount reasonably expected to be contributed by such member toward the activities of the coalition or association of influencing legislation is less than \$500 during the quarterly period during which the registration would be made.

(iv) NO DONOR OR MEMBERSHIP LIST DISCLOSURE.—No disclosure is required under this Act, by reason of this subparagraph, with respect to lobbying activities if it is publicly available knowledge that the organization that would be identified under this subparagraph is affiliated with the client concerned or has been publicly disclosed to have provided funding to the client, unless the organization in whole or in major part plans, supervises, or controls such lobbying activities. Nothing in this subparagraph shall be construed to require the disclosure of any information about individuals who are members of, or donors to, an entity treated as a client by this Act or an organization identified under this subparagraph.

* * * * *

(10) LOBBYIST.—The term “lobbyist” means any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a [six month period] 3-month period.

* * * * *

SEC. 4. REGISTRATION OF LOBBYISTS.

(a) REGISTRATION.—

(1) * * *

* * * * *

(3) EXEMPTION.—

(A) GENERAL RULE.—Notwithstanding paragraphs (1) and (2), a person or entity whose—

(i) total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed ~~[\$5,000]~~ \$2,500; or

(ii) total expenses in connection with lobbying activities (in the case of an organization whose employees engage in lobbying activities on its own behalf) do not exceed or are not expected to exceed ~~[\$20,000]~~ \$10,000,

(as estimated under section 5) in the ~~[semiannual period]~~ *quarterly period* described in section 5(a) during which the registration would be made is not required to register under subsection (a) with respect to such client.

* * * * *

(b) CONTENTS OF REGISTRATION.—Each registration under this section shall contain—

(1) * * *

* * * * *

(3) the name, address, and principal place of business of any organization, other than the client, that—

(A) contributes more than ~~[\$10,000]~~ \$5,000 toward the lobbying activities of the registrant in a ~~[semiannual period]~~ *quarterly period* described in section 5(a); and

* * * * *

(4) the name, address, principal place of business, amount of any contribution of more than ~~[\$10,000]~~ \$5,000 to the lobbying activities of the registrant, and approximate percentage of equitable ownership in the client (if any) of any foreign entity that—

(A) * * *

* * * * *

(6) the name of each employee of the registrant who has acted or whom the registrant expects to act as a lobbyist on behalf of the client and, if any such employee has served as a covered executive branch official ~~[or a covered legislative branch official in the 2 years before the date on which such employee first acted (after the date of enactment of this Act) as a lobbyist on behalf of the client,]~~ *or a covered legislative branch official*, the position in which such employee served.

* * * * *

SEC. 5. REPORTS BY REGISTERED LOBBYISTS.

(a) ~~[SEMIANNUAL]~~ *Quarterly* Report.—No later than 45 days after the end of ~~[the semiannual period beginning on the first day of each January and the first day of July of each year]~~ *the quarterly period beginning on the first day of January, April, July, and October of each year* in which a registrant is registered under sec-

tion 4, each registrant shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives on its lobbying activities during **such semiannual period** *such quarterly period*. A separate report shall be filed for each client of the registrant.

(b) **CONTENTS OF REPORT.**—Each **semiannual report** *quarterly report* filed under subsection (a) shall contain—

(1) * * *

(2) for each general issue area in which the registrant engaged in lobbying activities on behalf of the client during the **semiannual filing period** *quarterly period*—

(A) * * *

* * * * *

(3) in the case of a lobbying firm, a good faith estimate of the total amount of all income from the client (including any payments to the registrant by any other person for lobbying activities on behalf of the client) during the **semiannual period** *quarterly period*, other than income for matters that are unrelated to lobbying activities; **and**

(4) in the case of a registrant engaged in lobbying activities on its own behalf, a good faith estimate of the total expenses that the registrant and its employees incurred in connection with lobbying activities during the **semiannual filing period** *quarterly period*; and

(5) a certification that the lobbying firm, or registrant, and each employee listed as a lobbyist under section 4(b)(6) or paragraph (2)(C) of this subsection for that lobbying firm or registrant, has not provided, requested, or directed a gift, including travel, to a Member of Congress or an officer or employee of either House of Congress in violation rule XXXV of the Standing Rules of the Senate or rule XXV of the Rules of the House of Representatives.

(d) **ELECTRONIC FILING REQUIRED.**—A report required to be filed under this section shall be filed in electronic form, in addition to any other form that may be required by the Secretary of the Senate or the Clerk of the House of Representatives.

(e) **QUARTERLY REPORTS ON OTHER CONTRIBUTIONS.**—

(1) **IN GENERAL.**—Not later than 45 days after the end of the quarterly period beginning on the first day of January, April, July, and October of each year, or on the first business day after the first day of such month if that day is not a business day, each person who is registered or is required to register under paragraph (1) or (2) of section 4(a), and each employee who is or is required to be listed as a lobbyist under section 4(b)(6) or subsection (b) of this section, shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives containing—

(A) the name of the person;

(B) in the case of an employee, his or her the employer;

(C) the names of all political committees established or administered by the person;

(D) the name of each Federal candidate or officeholder, leadership PAC, or political party committee, to whom aggregate contributions equal to or exceeding \$200 were made by the person or a political committee established or ad-

ministered by the person within the calendar year, and the date and amount of each contribution made within the quarterly period;

(E) the date, recipient, and amount of funds contributed, disbursed, or arranged (or a good faith estimate thereof) by the person or a political committee established or administered by the person during the quarterly period—

(i) to pay the cost of an event to honor or recognize a covered legislative branch official or covered executive branch official;

(ii) to, or on behalf of, an entity that is named for a covered legislative branch official, or to a person or entity in recognition of such official;

(iii) to an entity established, financed, maintained, or controlled by a covered legislative branch official or covered executive branch official, or an entity designated by such official; or

(iv) to pay the costs of a meeting, retreat, conference, or other similar event held by, or for the benefit of, 1 or more covered legislative branch officials or covered executive branch officials;

(F) any information reported to the Federal Election Commission under the second sentence of section 315(a)(8) of the Federal Election Campaign Act of 1971 (relating to reports by intermediaries and conduits of the original source and the intended recipient of contributions under such Act) during the quarterly period by the person or a political committee established or administered by the person; and

(G) the amount and recipient of any funds provided to an organization described in section 527 of the Internal Revenue Code of 1986 that is not treated as a political committee under section 301(4) under the Federal Election Campaign Act of 1971.

(2) *DEFINITION.*—In this subsection, the term “leadership PAC” means, with respect to an individual holding Federal office, an unauthorized political committee that is associated with an individual holding Federal office, except that such term shall not apply in the case of a political committee of a political party.

SEC. 6. DISCLOSURE AND ENFORCEMENT.

The Secretary of the Senate and the Clerk of the House of Representatives shall—

(1) * * *

* * * * *

(4) make available for public inspection and copying at reasonable times the registrations and reports filed under this Act and, in the case of a report filed in electronic form pursuant to section 5(d), make such report available for public inspection over the Internet not more than 48 hours after the report is so filed;

* * * * *

(6) compile and summarize, with respect to each [semi-annual period] *quarterly period*, the information contained in registrations and reports filed with respect to such period in a clear and complete manner;

(7) notify any lobbyist or lobbying firm in writing that may be in noncompliance with this Act; [and]

(8) notify the United States Attorney for the District of Columbia that a lobbyist or lobbying firm may be in noncompliance with this Act, if the registrant has been notified in writing and has failed to provide an appropriate response within 60 days after notice was given under paragraph (7)[.];

(9) *maintain, and make available to the public over the Internet, without a fee or other access charge, in a searchable, sortable, and downloadable manner, an electronic database that—*

(A) includes the information contained in registrations and reports filed under this Act;

(B) directly links the information it contains to the information disclosed in reports filed with the Federal Election Commission under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434); and

(C) is searchable and sortable to the maximum extent practicable, including searchable and sortable by each of the categories of information described in section 4(b) or 5(b); and

(10) *retain the information contained in a registration or report filed under this Act for a period of at least 6 years after the registration or report (as the case may be) is filed.*

SEC. 7. PENALTIES.

[Whoever] (a) *CIVIL PENALTY.—Whoever knowingly fails to—*

(1) *remedy a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House of Representatives; or*

(2) *comply with any other provision of this Act;*
shall, upon proof of such knowing violation by a preponderance of the evidence, be subject to a civil fine of not more than [\$50,000] \$100,000, depending on the extent and gravity of the violation.

(b) *CRIMINAL PENALTY.—Whoever knowingly and corruptly fails to comply with any provision of this Act shall be imprisoned for not more than 5 years or fined under title 18, United States Code, or both.*

* * * * *

SEC. 15. ESTIMATES BASED ON TAX REPORTING SYSTEM.

(a) **ENTITIES COVERED BY SECTION 6033(b) OF THE INTERNAL REVENUE CODE OF 1986.**—A person, other than a lobbying firm, that is required to report and does report lobbying expenditures pursuant to section 6033(b)(8) of the Internal Revenue Code of 1986 may—

(1) *make a good faith estimate (by category of dollar value) of applicable amounts that would be required to be disclosed under such section for the appropriate [semiannual period]*

quarterly period to meet the requirements of sections 4(a)(3) and 5(b)(4); and

* * * * *

(b) ENTITIES COVERED BY SECTION 162(e) OF THE INTERNAL REVENUE CODE OF 1986.—A person, other than a lobbying firm, who is required to account and does account for lobbying expenditures pursuant to section 162(e) of the Internal Revenue Code of 1986 may—

(1) make a good faith estimate (by category of dollar value) of applicable amounts that would not be deductible pursuant to such section for the appropriate **[semiannual period]** *quarterly period* to meet the requirements of sections 4(a)(3) and 5(b)(4); and

* * * * *

SEC. 25. PROHIBITION ON PROVISION OF GIFTS OR TRAVEL BY REGISTERED LOBBYISTS TO MEMBERS OF CONGRESS AND TO CONGRESSIONAL EMPLOYEES

(a) *PROHIBITION.*—Any person described in subsection (b) may not make a gift or provide travel to a Member, officer, or employee of Congress, if the person has knowledge that the gift or travel may not be accepted under the rules of the House of Representatives or the Senate.

(b) *PERSONS SUBJECT TO PROHIBITION.*—The persons subject to the prohibition under subsection (a) are any lobbyist that is registered or is required to register under section 4(a)(1), any organization that employs 1 or more lobbyists and is registered or is required to register under section 4(a)(2), and any employee listed or required to be listed as a lobbyist by a registrant under section 4(b)(6).

* * * * *

ADDITIONAL VIEWS

Americans want and deserve honest government, and finally this Congress we have voted on a bill, H.R. 2316, which, as reported out of committee, is virtually identical to the bill that Republicans passed last Congress, including disclosure of Members' private-sector employment negotiations, prohibition of threats by Members to influence private-sector employment, the creation of a public lobbying database with increased frequency of lobbying disclosure, and increased penalties for lobbyist disclosure violations. Last year's Republican bill went further by including a moratorium on privately funded travel. It also required lobbyists to report their expenses more precisely.

Indeed, regarding all the provisions that were reported out of the committee last Congress, Mr. Conyers said "I am very pleased to join in this cooperative effort . . . Ladies and gentlemen, what we do with the manager's amendment in short has considerably strengthened the measure before us that is within our jurisdiction and I urge its support."¹ Mr. Nadler said "I support the manager's amendment which advances this legislation. This legislation goes to the very heart of this institution's credibility and integrity . . ."²

¹ H. Rep. 109–439 Part I (109th Congress, 2d Sess.) at 109–110.

² H. Rep. 109–439 Part I (109th Congress, 2d Sess.) at 111.

And Representatives Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Meehan, Wexler, Weiner, Schiff, Sanchez, Van Hollen, and Wasserman Schultz all stated the following of that amendment last Congress in the committee report on the legislation: “At the markup, we were able to develop a *bipartisan provision concerning the areas of Judiciary Committee jurisdiction*—principally the Lobbying Disclosure Act.”³

The increased disclosures required in H.R. 2316 are largely those that were contained in Sections 101 through 108 of H.R. 4975 as reported out of the Judiciary Committee during the last Congress. That bipartisan effort in this committee last Congress included provisions that require additional quarterly disclosures by lobbyists; disclosures of the names of federal candidates and officeholders, their leadership PACs, or political committees for whom fundraising events are hosted by lobbyists; disclosures of information regarding payments for events honoring Members; disclosures of payments to entities named for Members; disclosures of payments made to entities established, financed, maintained and controlled by Members as defined under current federal regulations; and disclosures of payments for retreats and conferences for the benefit of Members. That bipartisan effort in the last Congress also included requirements that lobbyists round their estimates of expenses to the nearest \$1,000 and that the Clerk of the House link lobbying disclosure reports to relevant FEC filings on the Internet. In addition, it included provisions for criminal penalties of not more than 3 years in jail for knowing and willful failures to comply, and not more than 5 years for knowing, willful, and corrupt failures to comply.

We are pleased that H.R. 2316 addresses many of the same reforms we reported out of this committee during the last Congress, and that the majority has finally seen its way to support legislation that is virtually identical to what Republicans supported last Congress.

We are also pleased to see that this legislation does *not* contain provisions that have already been rejected by the Senate because they may violate the First Amendment, namely regulations of grassroots communications.

We are pleased that an amendment offered by Mr. Cannon was adopted by voice vote. That amendment provides for a one-year revolving door ban that would prohibit private lawyers who enter contracts with congressional committees from lobbying Congress while under contract with such committee, and also prohibit such lawyers from lobbying Congress within one year of the expiration of such contract. If a committee is going to enter into a contract with a private law firm, the private lawyers working under that contract are going to become congressional insiders for purposes of their committee work. Just as a revolving door ban currently applied to prevent Members and senior staff from lobbying Congress within one year of their service in Congress, this amendment appropriately would impose a revolving door ban to prevent lawyers who are under contract with a committee of Congress from taking unfair advantage of the connections they made while under contract.

³ H. Rep. 109–439 Part I (109th Congress, 2d Sess.) at 154 (emphasis added).

We are also pleased that an amendment offered by Mr. King was adopted by voice vote. That amendment would require the posting of travel and financial disclosure reports on the public website of the Clerk of the House of Representatives to be listed in a format that is searchable and sortable.

We are disappointed, however, that the committee failed to adopt an amendment offered by Mr. Chabot that would have reauthorized the Office of Government Ethics for five years (through fiscal year 2012). The Office of Government Ethics guides executive branch policies specifically related to preventing conflicts of interest on the part of officers and employees of any executive agency and to facilitating the timely resolution of those conflicts that do occur. Although other attempts have been made to reauthorize this important agency, none have been successful so far.

GRASSROOTS COMMUNICATIONS REGULATIONS

We are very pleased to see that an amendment offered by Mr. Meehan that would have regulated grassroots communications was rejected by voice vote.

As the American Civil Liberties Union has stated in opposing provisions regulating grassroots communications, “Petitioning the government is core political speech, for which First Amendment protection is at its zenith.”⁴

Subjecting to federal regulation the voluntary efforts of members of the general public to communicate their own views cuts to the core of the freedom of speech that has made this country the most vibrant, creative, and free nation on Earth. It has always cost money to organize large numbers of people. That a private organization might get paid to simply facilitate organizing large numbers of citizens behind a common cause, freely agreed to, should not be subject to speech-chilling regulations.

Of course, grassroots communications are not “lobbying” at all, and the Supreme Court has said exactly that. In *Rumely v. United States*, the Supreme Court interpreted a Congressional resolution regarding lobbying as not including paid efforts to influence the general public because the Court said interpreting the resolution in that manner would cause “a serious constitutional doubt”⁵ about the legislation’s validity. The Court explained that any other interpretation of the resolution would “raise[] doubts of constitutionality in view of the prohibition of the First Amendment.”⁶ The Court approvingly noted the decision of the appeals court, which had clearly laid out the constitutional dangers created by lumping grassroots communications into the definition of “lobbying:”

It is said that lobbying itself is an evil and a danger. We agree that lobbying *by personal contact* may be an evil and a potential danger to the best in legislative processes. It is said that indirect lobbying by the pressure of public opinion on the Congress is an evil and a danger. That is *not* an evil; *it is a good, the healthy essence of the democratic process*. It is said that the financing of extensive efforts to influence public opinion is an

⁴Letter from the American Civil Liberties Union to U.S. Senators, “Support Bennett Amendment S.A. 20 to S. 1 “The Legislative Transparency and Accountability Act of 2007” (January 17, 2007).

⁵*Rumely v. United States*, 345 U.S. 41, 47 (1953) (emphasis added).

⁶*Id.* at 46.

evil and a danger. As to that, generalities are inaccurate . . . [T]he case before us concerns . . . the formation of public opinion through the processes of information and persuasion. There is no evil or danger in that process.⁷

Any regulation of grassroots communications would regulate the formation of public opinion through the processes of persuasion, and would therefore be unconstitutional.

In *United States v. Harriss*, the Supreme Court dealt with a lobbying regulation that applied to all those who “influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.”⁸ The regulations imposed upon individuals and organizations in that case were very similar to Democrats’ efforts to regulate grassroots communications today. The Supreme Court, however, interpreted the regulation to only apply to *direct* contact with Congress. The Court upheld the regulation by construing it “to refer only to ‘lobbying in its commonly accepted sense’—to *direct communication with members of Congress* on pending or proposed federal legislation,”⁹ even though on its face the regulations would have extended to the same so-called “grassroots” communications Democrats want to regulate today.

The Congressional Research Service confirmed this analysis in 1986, when it prepared a report for the Senate Subcommittee on Intergovernmental Relations of the Committee on Governmental Affairs. CRS wrote in that report that:

The Court’s ruling, in *U.S. v. Harriss* followed the reasoning in *Rumely* and interpreted the [Lobby] Act narrowly. Thus today, the Court’s interpretation applies the law only to individuals and groups who collect or receive money for the principal purpose of influencing legislation through direct contacts with Members of Congress . . . Since only direct contacts with Members—lobbying in its commonly accepted sense, in the Court’s determination—are covered, the Lobby Act exempts contacts between lobbyists and congressional staff, *and grassroots lobbying*.¹⁰

Further, a major treatise on federal lobbying law concluded that “In the *Harriss* decision, the Supreme Court repeatedly noted that the Act applies only to ‘direct communication with members of Congress.’ With that single phrase, the Supreme Court seemingly excluded from the Act indirect communications, such as . . . grassroots lobbying, and general communications and publicity.”¹¹

When the Supreme Court held that the lobbying legislation considered in the *Harriss* case could be applied *only* to direct contact with federal officials and *not* to organizations facilitating grassroots communications, it reasoned that “[o]therwise the voice of the people may all too easily be drowned out by the voice of special interest groups . . .”¹² But that is precisely what the Meehan amend-

⁷ *Rumely v. United States*, 197 F.2d 166, 174 (D.C. Cir. 1952).

⁸ 347 U.S. 612, 615 (1954).

⁹ *Id.* at 620. The Court stated that it was “construing the act narrowly to avoid constitutional doubts.” *Id.* at 623.

¹⁰ “Congress and Pressure Groups: Lobbying in a Modern Democracy: A Report Prepared for the Subcommittee on Intergovernmental Relations of the Committee on Governmental Affairs, United States Senate, by the Congressional Research Service (S. Prt. 99–161) (June 1986) at 45.

¹¹ Federal Lobbying (Jerald A. Jacobs, ed.) (BNA Books 1989) at 6.

¹² *Id.* at 625.

ment would have done if enacted, namely drown out the voice of the people with the voices of special interest groups.

What many describe falsely and pejoratively as “grassroots lobbying” is simply the encouragement of the general public to contact lawmakers about issues of general concern. It is the facilitation of grassroots communications between citizens and Members of Congress. Consequently, what the amendment seeks to regulate and deter are activities that *actually strengthen robust communications between average citizens and Members of Congress*, through such things as phone calls and constituent letters. That sort of healthy citizen-to-Member communication actually *weakens* the relative strength of direct interactions between paid lobbyists and Members of Congress, which is precisely what should be the goal of any “lobbying reform” legislation. The Meehan amendment, if adopted, would have gutted the underlying lobbying reform bill by including in it provisions that will actually *increase* the influence of special interests lobbyists who meet personally with Members of Congress and *weaken* the influence of average citizens at home.

Even worse, the amendment’s grassroots communications regulations exempt corporations, labor unions, and large, wealthy membership organizations, when they communicate with shareholders, officers, employees, or members. So at the same time the Meehan amendment would weaken the influence of average citizens and increases the influence of registered lobbyists, it would further weaken the influence of average citizens by proportionately *increasing* the influence of large corporations, labor unions, and large membership organizations.

The Supreme Court has generally allowed limits on financial contributions to political candidates if Congress does so to limit “corruption.” In *McConnell v. FEC*,¹³ the Court stated, “Our treatment of contribution restrictions . . . reflects the importance of the interests that underlie contribution limits—interests in preventing both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption.”

The Supreme Court has already held that the First Amendment protects anonymous political activity. Indeed, the NAACP led the charge in the Supreme Court during the civil rights era, a charge that resulted in the decision of *NAACP v. Alabama*.¹⁴ That decision held that the First Amendment freedom of association bars compelled disclosure of membership lists. For obvious reasons, the NAACP did not want Alabama to be able to use this information against them to suppress the civil rights movement. As Justice Stevens stated for the Supreme Court in *McIntyre v. Ohio Elections Commission*, “Anonymity is a shield from the tyranny of the majority [that] exemplifies the purpose behind the Bill of Rights and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression.”¹⁵

These are not abstract principles. The *Federalist Papers* are the seminal essays written by James Madison and Alexander Hamilton defending the ratification of the Constitution we live under today. The *Federalist Papers* were written anonymously precisely because

¹³ 540 U.S. 93, 136 (2003).

¹⁴ 357 U.S. 449 (1958).

¹⁵ 514 U.S. 334, 357 (1995).

Madison and Hamilton wanted to make readers focus on their arguments, not on their personalities. Madison and Hamilton, and many of our other Founding Fathers, routinely wrote under anonymous pen names precisely because they wanted people to focus on what they were saying, not on the source of what they were saying, and in that way to encourage many other private citizens to petition their government.

LAMAR SMITH.
HOWARD COBLE.
CHRIS CANNON.

